James Buchanan

COURTS AND LAWYERS

—OF—

PENNSYLVANIA

A HISTORY

1623-1923

By

FRANK M. EASTMAN

Author of "Eastman on Private Corporations in Pennsylvania," "Eastman on Taxation in Pennsylvania," etc., etc.

VOLUME II

ILLUSTRATED

THE AMERICAN HISTORICAL SOCIETY, INC.
NEW YORK
1922

CHAPTER XXVII.

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Chief Justices McKean and Shippen and Justices Brackenridge and Smith.

Thomas McKean, the first Chief Justice of the Commonwealth of Pennsylvania, was born in Chester county, March 19, 1734, and died in Philadelphia, June 24, 1817, being buried in the First Presbyterian graveyard of that city. He was a son of William McKean, a native of Ireland, and was educated at the academy of the Rev. Francis Allison, New Castle, Delaware, where he studied law in the office of David Finney and was appointed deputy prothonotary. He was admitted to the New Castle bar before he was twenty-one, and in May, 1755, to that of Chester county. He afterwards went to England and studied at the Middle Temple, London, being admitted May 9, 1758. He served as deputy attorney general for Sussex county, and was clerk of the Assembly, 1757-59. In 1762, with Caesar Rodney, he became reviser of laws that had been passed previous to 1752, and in October of that same year was elected a member of the General Assembly from New Castle county and was annually re-elected until the Revolution, although he was for a portion of the time a resident of Philadelphia. He was a trustee of the loan-office of New Castle county for twelve years, and in 1765 was chosen to the Stamp Act Congress. He was appointed sole notary of the lower counties of Delaware and judge of the Court of Common Pleas and of the Orphans' Court of New Castle. He ordered that all the proceedings of this court be recorded on unstamped paper, and this was the first court in the colonies that established such a rule. He was collector of the port of New Castle in 1771, speaker of the House of Representatives in 1772, and from 1774 until February, 1783, was a member of the Continental Congress, being the only member that served in Congress from its opening until the peace.

While thus representing Delaware, of which he was the president in 1781, he was chief justice of Pennsylvania from July, 1777, to December, 1799, each state claiming him as its own, and until 1779 he also occupied a seat in the Delaware legislature. During the session of Congress in 1776, he was one of the committee to state the rights of the colonies, one of the secret committee to contract for the importation of arms, and of that to prepare and digest the form of the Articles of Confederation to be entered into between the Colonies, which he signed on the part of Delaware, and he superintended the finances and a variety of important measures.

In July, 1776, he was chairman of the delegates from New York, New Jersey and Pennsylvania, and in the same year chairman of the Pennsylvania committees of safety and inspection and the Philadelphia com-

mittee of observation. A few days after signing the Declaration, he marched at the head of a battalion to Perth Amboy, New Jersey, to reenforce General Washington until the arrival of the Flying Camp. On his return to Dover he found a committee awaiting him, to urge him to prepare the Constitution of the State, which he drew up on the night of his arrival and which was unanimously adopted by the Assembly the next day.

While acting in 1777 in the double capacity of president of Delaware and chief justice of Pennsylvania, he describes himself in a letter to his intimate friend, John Adams, as "hunted like a fox by the enemy, compelled to remove my family five times in three months, and at last fixed them in a little log house on the banks of the Susquehanna, but they were soon obliged to move again on account of the incursions of the Indians."

He was president of Congress in 1781, and in that capacity received Washington's dispatches announcing the surrender of Lord Cornwallis. He was a delegate to the Pennsylvania Convention to ratify the Federal Constitution in 1787 and was, next to Wilson, one of the most fearless advocates for its adoption. In October, 1799, Thomas McKean became the second executive of the State of Pennsylvania, under the Constitution that he had helped to frame, and served three consecutive terms or a period of nine years.[1]

Judge McKean, among those who best knew him, was always considered a sound lawyer and an upright judge. He, however, although theoretically attached to the democracy of the time, was somewhat aristocratic in his practice. He was a stern and an arbitrary man, still one quite susceptible of flattery, fond of official display, and by no means averse to the blandishments of titles. On this subject it is related of him, that shortly after his appointment, a petition was presented to him, directed to the Right Honorable Thomas McKean, Esq., Lord Chief Justice of Pennsylvania, upon which he very complacently observed: "These are, perhaps, more titles than I can fairly lay claim to, but at all events the petitioner has erred on the right side." In opening the sessions of his courts, it was done with great ceremony and form, and the Chief Justice held all his attendants to the most rigid observance of respectful duty. The judges, it is true, had thrown off their wigs, but they nevertheless retained the robes and such other appliances, as probably in their opinion, contributed to make "ambition virtue."

It is said in a note to Graydon's "Memoirs of His Own Time" that McKean, when on the bench, wore an immense cocked-hat and was dressed in a scarlet gown, in which costume he must have presented an imposing appearance!

In taking their seats at the opening of the court in the city, as well as in the counties—with all their professed republican principles—they followed and imitated, at no great distance, the example of the judges of

[1]From "The Judiciary of Franklin County, by Hon. Rush Gillan.

the English Court of King's Bench. The sheriff, in all his pomp, together with the tip-staves and attendants, assembled at the commencement of the term and swelled the retinue of the Chief Justice and his associates, as they proceeded to assume their respective places upon the judicial seat. We mention these ceremonies, not to complain of them, but rather to show that it was far easier to cast off all allegiance to the mother country than altogether to abandon or renounce those fashions or follies which were portions of our inheritance.

Chief Justice McKean, though always deemed a very able lawyer, and a man of inflexible honesty, was still a man of strong prejudices, jealous of his authority and rough and overbearing in its maintenance. If the advocates of his time had not been men of exalted and unbending principles, his sternness of judicial deportment would have exercised a most deplorable influence upon the independence of the bar, but the aristocracy of genius can neither be awed nor subdued, and while its possessor cannot but feel conscious of its value, it also secures the unwilling homage of those, however lofty may be their official position, who would presumptuously venture to attempt to put it into "circumscription and confine."

We have said that Judge McKean was a stern and despotic man; as an instance of it, it is related of him, that while Governeur Morris was addressing him, some remark that he made gave offence to his Honor, who, turning to the counsel, somewhat roughly, commanded him to take his seat. Mr. Morris, who was a man of lofty spirit, replied, "If, sir, you do not wish to hear me, I will cease speaking; but whether I shall sit or stand depends upon my own convenience, and I prefer standing."

At another time, Mr. Lewis, who was also a firm man, and had, for the most part, great influence with the court, prefaced a motion which he was about to make, by saying, that the subject was so uncommon that he scarcely knew in what form to present the application; to which the judge harshly answered, "You have been more than twenty years at the bar, Sir, and if you don't understand how to make a motion, you had better consult your books, and learn."

It need hardly be remarked, whatever may have been his deficiency in civility, that he was a judge of great decision and force of character. During the course of his long judicial life, he never wavered in what his duty seemed to require.

During McKean's second term of office as governor of Pennsylvania —for he was thrice elected—a committee consisting of Duane, Lieper and others were appointed by a town meeting to wait upon him, to inform him that the democracy of Philadelphia were utterly opposed to the nomination of William Tilghman as chief justice of Pennsylvania. The committee were introduced into the executive apartments, and the governor received them in his civil but reserved and aristocratic manner, treating them simply as his constituents; when, however, they announced themselves as the representatives from the democratic party—the sovereign people—he bowed most profoundly, and inquired of them what the great democracy of Philadelphia required of him. They proceeded, and stated the purposes of their delegation, and in pretty plain terms gave him to understand that the appointment of Mr. Tilghman would never meet the approval of the democratic party. "Indeed," said the governor. "Inform

your constituents that I bow with submission to the will of the great democracy of Philadelphia; but by G-d, William Tilghman shall be chief justice of Pennsylvania."

The governor having vetoed what was deemed an important bill, passed by the legislature, a committee of three of that body was appointed to wait upon his excellency, to remonstrate with him, and to urge the reconsideration of the veto. He received them with his accustomed dignified politeness, and after they had explained the object of their mission, apparently without noticing their communication, he deliberately took out his watch, and handing it to the chairman, said "Pray, Sir, look at my watch; she has been out of order for some time; will you be pleased to put her to rights." "Sir," replied the chairman, with some surprise, "I am no watchmaker; but I am a carpenter." The watch was then handed to the other members of the committee, both of whom declined, one being a currier, the other a bricklayer. "Well," said the governor, "this is truly strange! Any watchmaker's apprentice can repair that watch; it is a simple piece of mechanism, and yet you can't do it! The law, gentlemen, is a science of great difficulty and endless complications; it requires a life time to understand it. I have bestowed a quarter of a century upon it; yet you, who can't mend this little watch, become lawyers all at once, and presume to instruct me in my duty." Of course, the committee vanished, and left the governor "alone in his glory."

In 1806, when the House of Representatives of the State of Pennsylvania sent an address to Governor McKean, requesting the removal of Judge Brackenridge, the request was utterly refused. The committee attempted to remonstrate with him, stating that the term "may remove," in the constitution, meant "must remove." To which he promptly answered, that he would have them to know that "may" sometimes meant "won't."

He would at times, though very rarely, lay aside the rigidity and sternness of his manner, and adopt a familiarity and cordiality that, in the general, were foreign from his disposition. A very worthy man applied to him for a commission as justice of the peace, but stated very frankly that he had no certificates or backers. "Never mind," said the governor, "I require none; and if any one should ask you how you got the appointment, tell him Thomas McKean recommended you, and the governor appointed you," and yet, even in this, and in similar instances of kindness, it will be perceived, that he exulted more in his own power, than in the benefit conferred upon others.

On the twenty-sixth of September, 1781, he received from Princeton College the diploma of Doctor of Laws, and the next year a similar honor from Dartmouth, New Hampshire. On the thirty-first of October, 1785, he was elected a member of the Cincinnati. He also became a trustee of the University of Pennsylvania, and the patron of various political, and philanthropic societies. He was twice married; first in 1762, to Mary, the eldest daughter of Joseph Borden, of Bordentown, New Jersey, who died in 1773; secondly, in September, 1774, to Sarah Armitage, of New Castle, Delaware. By the first wife he had two sons and four daughters, and by the second, five children, none of whom are now living; and most of whom were survived by their illustrious father.

Governor McKean was a tall, stately, and—notwithstanding his great age—erect person. He usually wore a cocked hat, carried a gold-headed

cane, and walked, even to the close of his life, though with a somewhat tottering step, with great apparent dignity and pride. His courtesy always displayed as much selfishness as suavity, he generally moved through the streets alone, and apparently much absorbed in his reflections. As is known, he was one of the signers of the Declaration of Independence, and if we may use the phrase—which we do in all respect and kindness—he was an actual impersonation, a practical living, walking emblem and memento of that Declaration. Apparently, the two proudest men the city ever beheld—and to be sure they had much to be proud of—were our present venerable subject, and his son-in-law, the Marquis de Casa Yrujo, the ambassador of Spain, the father of the lamented Duke of Soto Major, whose melancholy and untimely death recently occurred at Madrid.

In contemplating the career of Governor, or Chief Justice McKean, (who, apart from scanty instruction received in early life, from the Reverend Francis Allison, his preceptor, had but few opportunities of obtaining literary instruction), we are astonished at the force and expansion of his native genius, even unaided, as it was, by the advantages of a liberal education. In this respect he strongly resembled William Lewis. In mere intellectual power, they were equal, if not superior, to most of their contemporaries; but having unassisted, as it were, elevated themselves upon the ladder of ambition, above the masses, with a natural but not commendable spirit, they held the courtesies and amenities of life as matters of comparative indifference. They became reserved, haughty, and sometimes overbearing; and from being in advance of those who had enjoyed greater advantages or opportunities, they assumed superiority over those who, with equal native capacity, had been benefited and improved by all the charms, embellishments, and appliances of a refined education.[2]

Edward Shippen, the second Chief Justice of the Commonwealth, was born in Philadelphia, on the 16th day of February, 1729. He was a great-grandson of Edward Shippen, who emigrated to Boston in 1668, where he became successful as a merchant and accumulated a fortune. Having married a Quakeress, he adopted her faith. He was either banished or driven to take refuge in Philadelphia, where he became speaker of the Assembly in 1695, first mayor of the city of Philadelphia in 1701, and President of Council for many years. He was also an associate provincial judge.

Edward Shippen, the Chief Justice, entered upon the study of law in the office of Tench Francis, then the most learned and prominent counsel of the Philadelphia bar. In 1749 he sailed for England, where he was entered as a student at the Middle Temple, and was admitted to the bar in the spring of 1750, whereupon he returned to Philadelphia. He was admitted to practice at the bar of the Supreme Court of Pennsylvania on September 25th of that year. On November 22, 1752, he was appointed judge of the Admiralty Court in Philadelphia. In April, 1756, he was deputized with some others to pacify a mob at Lancaster who had gathered in consequence of some recent Indian massacres in the western part of the State, in which mission he seems to have been successful. On Sep-

[2]Brown's "Forum," vol. 1, p. 323 et seq.

tember 24, 1765, he was appointed prothonotary of the Supreme Court, which position apparently did not interfere with the performance of his judicial functions.

In 1770 Jared Ingersoll was appointed Commissioner of Appeals in Admiralty, and his tribunal seems to have drawn much business away from Shippen's court. On December 12th of the same year, Shippen was appointed a member of the Provincial Council.

At the breaking out of the Revolution, Shippen withdrew with his family to his country seat near the Falls of the Schuykill, where he remained in retirement during the Revolutionary War, to which by sentiment and association he was opposed. By order of the Supreme Executive Council he was placed on his parole to give no assistance to the enemy, and bound by recognizance not to depart far from his home. After the restoration of peace, on May 1, 1784, he was appointed president judge of the Common Pleas of Philadelphia, and served in that capacity with universal approbation for upwards of six years. On September 16th of the same year he was appointed one of the judges of the High Court of Errors and Appeals, and continued as such until that tribunal was abolished.

On October 3, 1785, he was elected a justice for the Dock Ward in Philadelphia, and on the following day received from the Supreme Executive Council an appointment as President of the Quarter Sessions and Jail Delivery, which positions he shortly afterwards resigned. He was appointed an associate justice of the Supreme Court on January 29, 1791, and on the election of Chief Justice McKean to the governorship, he was by him appointed Chief Justice in his place. This office he resigned in 1805, and died on December 16, 1806.

As a lawyer, Chief Justice Shippen may be certainly said to have been "patient, discriminating, and just." It is to his pen that we owe the first law reports published in Pennsylvania. Unfortunately, we have few if any verbatim reports of his opinions, and are able, therefore, to judge but imperfectly of their merits. As far as can now be seen, his mind was of an eminently practical cast. Not so well versed as his great successors, Chief Justices Tilghman and Gibson, in the more abstruse learning of his profession, he far excelled them in his intimate acquaintance with Pennsylvania practice and precedent, for a period extending over more than half a century. "He was a man of large views," said Chief Justice Tilghman, "and one for whom I always entertained a most affectionate regard." "Everything that fell from that venerated man is entitled to great respect," said Judge Duncan. He was, indeed, such a judge as the state wanted—a man of sound, practical common sense, of great experience, some talents, and undoubted integrity.

Of the private character of Chief Justice Shippen, it is, at this day, difficult to speak intelligently. He was fond of literature outside the realms of his profession, frequently alluding to the classics, in his correspondence, especially the works of Virgil and Ovid. He was interested in the prosperity of the University of Pennsylvania, and was, at one time, a trustee of that institution.[3]

[3]Keith's "Provincial Councillors of Pennsylvania," pp. 58-9.

When Judge Shippen became Chief Justice, he was seventy years old; not a remarkable age, considered in reference to many of the judges of England, and who, at that time of life, would seem, from being called junior judges, to be only in their prime; but, apart from that, Judge Shippen was of a long-lived family, of great vigor of constitution, and fully retained his mental and physical powers until a very short time before his death. He was an agreeable, unassuming, and prepossessing gentleman, of a kind heart, and dignified personal appearance, and he was beloved and venerated by all who knew him.[4]

Hugh Henry Brackenridge was born in Scotland, in 1748, and came with his parents to this country at the age of five years. He was raised in poverty, but managed to acquire a scanty education, and by teaching school in Maryland acquired sufficient means to enable him to enter Princeton College, from which he graduated in 1774, and became a chaplain in the army. He began the study of law in 1778 with Samuel Chase, afterwards one of the judges of the Supreme Court of the United States, and was admitted to practice in the Supreme Court of Pennsylvania in 1780.

In 1799, Judge Shippen having become Chief Justice on the election of Chief Justice McKean to the governorship, Brackenridge was appointed in his place. In 1806 Judge Tilghman succeeded Judge Shippen as Chief Justice, and Yeates and Brackenridge retained their places as associate judges. Two more absolutely dissimilar persons could hardly be imagined. Yeates was a tall, portly person, with a handsome, florid and benignant face, always dressed with neatness—a fine representative of a gentleman of the old school. Though a man of great wealth he was, however, exceedingly parsimonious. Brackenridge was about the same height, but bent in the shoulders, dark complexioned, with small, black, penetrating eyes, deeply set in his head. He was unbelievably careless in his dress, and otherwise neglected his person to an extraordinary extent. Though by no means affluent, he was liberal in his expenditures.

Yeates was a great lover of society, while Brackenridge was reserved and misanthropic. Yeates was somewhat ostentatious of his legal and classical learning, while Brackenridge, although a ripe scholar and a good lawyer, took no pains to exhibit his acquirements. It is perhaps unnecessary to say that these men never by any chance agreed upon anything unless it was to disagree.

It is unfortunate that Brackenridge's memory is mainly perpetuated because of his very great eccentricities. He was, as before stated, a man of considerable learning and undoubted integrity. His "Law Miscellanies" are yet interesting reading, and his "Modern Chivalry," which passed through several editions, is still to be found in public libraries. There is no end to the stories about his eccentricities, but the following may serve as an example:

When the circuit courts were in existence, a friend of the Judge, riding in his carriage in the western part of the State, while a prodigious

[4]Brown's "Forum," vol. 1, pp. 325-6.

storm of wind and rain prevailed, saw a figure approaching, which resembled what might be conceived of Don Quixote, in one of his wildest moods: a man, with nothing on but his hat and boots, mounted upon a tall, raw-boned Rosenante, and riding deliberately through the tempest. On nearer approach he discovered it to be Judge Breckenridge, and upon inquiring what was the cause of the strange phenomenon, Breckenridge informed him, that seeing the storm coming on, he had stripped himself and put the clothes under the saddle; "because," he said, "though I am a *judge,* I have but *one suit,* and the storm, you know, would spoil the *clothes;* but it couldn't spoil *me.*"

Judge Brackenridge died in 1816, leaving a moderate estate to his family.

Thomas Smith, an associate justice of the Supreme Court, was born in Scotland, in 1745, and emigrated to Pennsylvania as a young man. He settled in Bedford county, where he was appointed deputy-surveyor in 1769. In 1773 he was commissioned as a justice of the peace, and in the same year was made prothonotary and clerk of the courts, and register and recorder. He was an active partisan in the Revolution, becoming colonel of the First Battalion in 1779.

He was a member of the Constitutional Convention of 1776, was elected to the Assembly in 1776 and 1778, and to the Continental Congress in 1780 and again in 1781. He was admitted to the bar at Philadelphia in September, 1777, and to the Bedford county bar at the April term in 1778. He was appointed president judge of the Fourth Judicial District, and held the first court under the Constitution of 1790, for the county of Mifflin, at Lewisburg, in December, 1791. He was promoted to the Supreme Bench on January 31, 1794, and served continuously thereupon until his death at Philadelphia, on March 31, 1809.

CHAPTER XXVIII.

RECONSTRUCTION OF THE COURTS UNDER THE CONSTITUTION OF 1790—REGISTERS' COURTS—ACT OF FEBRUARY 24, 1806—REPORT OF THE JUDGES ON THE ENGLISH STATUTES.

CHAPTER XXVIII.

Reconstruction of the Courts Under the Constitution of 1790—Registers' Courts—Act of February 24, 1806—Report of the Judges of the English Statutes.

The Constitution of 1776 had never been satisfactory, and accordingly a new constitution was adopted in 1790, the provisions of which relative to the judiciary were as follows:

The judges of the supreme court, and of the several courts of common pleas, shall hold their offices during good behaviour: But for any reasonable cause, which shall not be sufficient ground for impeachment, the governor may remove any of them, on the address of two-thirds of each branch of the legislature. The judges of the supreme court, and the presidents of the several courts of common pleas shall, at stated times, receive, for their services, an adequate compensation, to be fixed by law; which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this commonwealth.

The jurisdiction of the supreme court shall extend over the state; and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general gaol delivery in the several counties.

Until it shall be otherwise directed by law, the several courts of common pleas shall be established in the following manner: The governor shall appoint in each county, not fewer than three, not more than four judges, who, during their continuance in office, shall reside in such county: The state shall be, by law, divided into circuits, none of which shall include more than six, nor fewer than three counties. A president shall be appointed of the courts in each circuit, who, during his continuance in office, shall reside therein. The president and judges, any two of whom shall be a quorum, shall compose the respective courts of common pleas.

The judges of the court of common pleas in each county shall by virtue of their offices, be justices of oyer and terminer and general gaol delivery, for the trial of capital and other offenders therein; and two of the said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer or gaol delivery in any county, when the judges of the supreme court, or any of them, shall be sitting in the same county. The party accused, as well as the commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the supreme court.

The supreme court and the several courts of common pleas shall, beside the powers heretofore usually exercised by them, have the power of a court of chancery, so far as relates to the perpetuating of testimony, the obtaining of evidences from places not within the state, and the care of the persons and estates of those who are non compotes mentis: And the legislature shall vest in the said courts such other powers to grant

relief in equity, as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts, as they shall judge proper for the due administration of justice.

Judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace and orphans' court thereof; and the register of wills, together with the said judges or any two of them, shall compose the register's court of each county.

The judges of the court of common pleas shall within their respective counties have the like powers with the judges of the supreme court to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them and the like right and justice to be done.

The president of the courts in each circuit within such circuit, and the justices of the court of common pleas within their respective counties shall be justices of the peace, so far as relates to criminal matters.

The governor shall appoint a competent number of justices of the peace, in such convenient districts, in each county, as are or shall be directed by law; They shall be commissioned during good behaviour; but may be removed on conviction of misbehaviour in office, or of any infamous crime, or on the address of both houses of the legislature.

A register's office for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county.

The Act of April 13, 1791,[1] provided for the organization of the courts under this constitution.

By the sixth section it was provided that the Supreme Court should be established with the same powers which had theretofore been established by the laws of the commonwealth, consistently with the provisions made in the constitution. Three terms of the court were to be held in each year, one term beginning on the first Monday in January to continue for three weeks and no longer, and two terms not to exceed two weeks each to be held in April and September, respectively, and courts of nisi prius for such intermediate times as the justices of the court should deem most convenient.

By the second and third sections it was provided as follows:

In order to render effectual the provisions made in the said constitution for establishing the courts of common pleas, this commonwealth shall be, and hereby is, divided into five districts or circuits, to be limited as follows; that is to say, the first circuit to consist of the city and county of Philadelphia, and the counties of Bucks, Montgomery and Delaware; the second circuit to consist of the counties of Chester, Lancaster, York and Dauphin; the third circuit to consist of the counties of Berks, Northampton, Luzerne and Northumberland; the fourth circuit to consist of the counties of Cumberland, Franklin, Bedford, Huntingdon and Mifflin; and the fifth circuit or district to consist of the counties of Westmoreland, Fayette, Washington and Allegheny.

In and for each of the said districts or circuits, a person of knowl-

[1] 14 Statutes at Large, p. 110.

edge and integrity, skilled in the laws, shall be appointed and commissioned by the governor, to be president and judge of the courts of common pleas, within such district or circuit, and that a number of other proper persons, not fewer than three, nor more than four, shall be appointed and commissioned judges of the courts of common pleas, in and for each and every of the counties of this commonwealth, which said presidents and judges shall, after the said thirty-first day of August next, respectively, have and execute all and singular the powers, jurisdictions and authorities of judges of the courts of common pleas, judges of the courts of oyer and terminer and general gaol delivery, judges of the orphans' courts, and justices of the courts of quarter sessions of the peace, agreeably to the laws and constitutions of this commonwealth.

A Register's Court was created by the fifth section as follows: "The said president and judges, or any two of them, and the register of wills, shall compose the register's court in each county, and shall have all and singular the powers, jurisdictions and authorities thereunto belonging."

The seventh section provided that any person indicted in any court of oyer and terminer, gaol delivery or sessions of the peace, might remove the indictment and all proceedings thereon into the Supreme Court by writ of certiorari or a writ of error on an allowance by the Supreme Court or one of the justices thereof upon sufficient cause shown.

By the sixteenth and seventeenth sections the High Court of Errors and Appeals was reorganized as already hereinbefore stated. Justices and president judges who had sat in any case below might not sit on the appeal of such case to this court.

The fifteenth section provided that no judge of any courts of record mentioned in the act should practice as an attorney or counsellor in any court of justice in this Commonwealth or elsewhere.

By the Act of April 13, 1791,[2] the Chief Justice of the Supreme Court received a salary of one thousand pounds per annum, with an allowance of thirty shillings per day while on circuit as an allowance for traveling expenses. The associate justices received six hundred pounds per annum, with the same allowance for traveling expenses. The president of the Court of Common Pleas of the circuit of Philadelphia received six hundred pounds per annum, and the presidents of the other courts of Common Pleas five hundred pounds per annum. The other judges of the courts received thirty pounds per annum.

By a supplement of April 8, 1793,[3] the presidents of the courts of Common Pleas received, when attending the high Court of Errors and Appeals, the sum of three dollars for every day they attended during the session of the said court, and the sum of three dollars for every thirty miles necessarily traveled in going to and returning from the same. The assistant judge of the court of Common Pleas of the county of Philadelphia received one hundred and twenty dollars per annum in addition to the amount previously granted, and the assistant judges of the county

[2] 14 *Ibid*, p. 106.
[3] *Ibid*, p. 393.

courts of common pleas the sum of sixty dollars, also in addition to the amount formerly granted. It will be understood that the pounds above mentioned were not pounds sterling, but Pennsylvania currency.

By the Act of April 4, 1796,[4] the salaries of the assistant judges of the Supreme Court and the presidents of the Courts of Common Pleas of the Philadelphia circuit were fixed at four hundred dollars per annum in addition to their former salaries, and the sum of two hundred and sixty-six dollars and sixty-seven cents per annum was added to the salaries of the presidents of the Courts of Common Pleas of the other districts. This act, however, was to continue in force but two years.

By the Act of September 30, 1791,[5] an appeal lay from all acts and decisions of the several registers of wills to the Registers' Courts, to be taken within the term of two years, but in cases involving persons absent from the United States or under legal disabilities an appeal might be taken within five years after the return of such parties or the removal of their disabilities.

An act "to extend the powers of the justices of the peace in this State," passed April 19, 1794,[6] extended the jurisdiction of justices of the peace to actions of debt and other demands not exceeding twenty pounds, subject to the like relief to insolvent debtors and under every regulation provided for in the act approved March 1, 1745, entitled "An act for the more easy and speedy recovery of small debts." In any plea exceeding ten pounds the defendant or plaintiff might elect before judgment rendered to have the cause tried in the Court of Common Pleas, the defendant so electing giving proper security, and in all cases where the demand was above five pounds either party might appeal to the Court of Common Pleas within three weeks next following the giving of judgment.

The Act of March 20, 1799,[7] abolished the courts of nisi prius theretofore held by the Supreme Court, sitting in banc in Philadelphia, and established in their place circuit courts, except in the county of Philadelphia, where the nisi prius courts were continued. This was done in order to relieve suitors in remote parts of the State from being compelled to come to Philadelphia to attend the trials at nisi prius. By the first, second and third sections of this act it was provided as follows:

That instead of the courts of nisi prius, as now held, a court, styled a circuit court, shall be held after the end of the next December term of the supreme court of this commonwealth, by the justices of the same court, or one or more of them, in the several counties of this commonwealth, except the county of Philadelphia, at such times and places as the said justices shall direct and appoint, having due regard to the convenience of the people, and so as to interfere as little as may be with the courts of common pleas and courts of quarter sessions of the peace in the said several counties.

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[4] 15 Statutes at Large, p. 448.
[5] 14 *Ibid*, p. 192.
[6] 15 *Ibid*, p. 98.
[7] 16 Statutes at Large, p. 199.

That the said justices of the supreme court, sitting in banc, shall, at and during the next December term of the said supreme court, direct and appoint the several times and places of holding the said circuit courts in the succeedind spring or summer; and at and during their sitting in banc in March term following, direct and appoint the several times and places of holding the said circuit courts in the succeeding autumn or winter, and in like manner, at the several subsequent December and March terms, respectively, direct and appoint the times and places of holding the said several circuit courts, and shall forthwith cause publication to be made in two of the newspapers of the city of Philadelphia, of the several times and places of holding the said courts, respectively.

From and after the last day of the next December term of the said supreme court, the said justices at the circuit court shall have full power and authority, by virtue of this act, when and often as there shall be occasion, to allow and take cognizance of appeals to the said circuit courts from the register's and orphans' courts in the said several counties, except the county of Philadelphia, and to issue writs of certiorari, habeas corpus, and all other remedial and other writs and process, grantable by the said justices by virtue of their offices, excepting writs of error and certiorari after judgments, orders or decrees given or obtained, and have the same made returnable into the offices of the clerks of the said circuit courts in the said counties, respectively, to which the said writs and process shall be issued as aforesaid; and that each of the said circuit courts shall have a public seal, and all writs of certiorari, habeas corpus, and all other remedial and other writs and process, from the said several circuit courts shall, in the usual form, be made out and issued by the said clerk of the circuit courts in their respective counties, and sealed with the seal of such court, attested in the name of the chief justice or the judge presiding at and signed by the clerk of the same court.[8]

By the fifth section it was provided:

The judges of the supreme court, or any one or more of them, while holding any circuit court, shall have power to give judgment, pass decrees, and award execution, and, generally, have, use and exercise similar power in any cause or suit had before them, and in all cases wherein jurisdiction is given by this act, in as ample manner as if sitting in banc, and shall have power to try any capital or other criminal case which shall have been removed into the said circuit court, in the manner which now is, or hereafter may be, directed by law, though not sitting as a court of oyer and terminer, upon any indictment which may have been found at any county court of oyer and terminer or sessions of the peace, and without any new indictment, and upon conviction of the crimes, misdemeanors, or offences, charged in any such indictment, may, at such court, proceed to pass sentence, assess fines, forfeit recognizances, and pronounce final judgment and award execution as fully and amply as the supreme court now may or can do when sitting in banc; and upon the removal of any such indictments, in the manner directed by law, the same, with all the proceedings thereon, shall be transmitted and filed with the clerk of the circuit court, as in civil cases, that the said judges at their next circuit court may proceed thereon. Provided always, That if either of the parties to any suit

[8] 16 *Ibid*, pp. 199-201.

removed from the common pleas, the register's or orphans' court, shall be dissatisfied with the judgment or decision of the said circuit courts, on any demurrer, special verdict, case stated, point reserved for the consideration of the court on the trial, motion in arrest of judgment or for new trial, or to set aside a judgment, discontinuance, or *non pros,* that then, and in such case, the party so dissatisfied with the judgment of the said circuit court, and appealing from the same to the said supreme court, shall obtain from the clerk of the circuit court of the respective county, a record of all the proceedings, and file the same with the prothonotary of the supreme court before the next term, and in failure thereof, judgment shall be confirmed and execution awarded, in the same manner as if such appeal had not been made; but no such appeal shall be available, unless the counsel for the said appellant shall state in writing his reasons for the said appeal, and subscribe his name to the same, certifying his belief that the same are sufficient in law to obtain a decision in favor of his client, and are not made for the purpose of delay; and after hearing and determination in the said supreme court, in any of the cases aforesaid the said supreme court shall order the records aforesaid with the decision and determination thereon written and duly certified, to be remitted to the said circuit courts, respectively, on payment of the fees incurred in the said supreme court, and the same decision and determination shall be duly carried into execution and effect by the said several circuit courts.[9]

A Sixth Judicial District, to consist of the counties of Beaver, Butler, Crawford, Mercer and Erie, was created by the Act of April 2, 1803.[10]

The Act of February 24, 1806,[11] entitled "An act to alter the judiciary system of this Commonwealth," provided that thenceforth no issue in fact in the Supreme Court should be authorized in banc, but all issues of fact then pending in the Supreme Court should be tried at courts of nisi prius to be held in the city of Philadelphia in the manner theretofore used at such times as the judges of the Supreme Court might direct. Any judge of said court might hold sittings for the trial of issues of fact in term time without regard to the sittings of the judges then in banc, with power and authority as a judge at nisi prius.

By section 2 the State was divided into two Supreme Court Districts, the Western District consisting of the counties of Bedford, Somerset, Westmoreland, Fayette, Greene, Washington, Allegheny, Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango, Armstrong, Cambria, Indiana, Jefferson, Clearfield and McKean; and the Eastern District consisting of the remaining counties of the State. A prothonotary was to be appointed for each district. The 11th section of the act abolished the High Court of Errors and Appeals and vested all the powers exercised by that tribunal in the Supreme Court.

Section 12 divided the State into judicial districts as follows:

First district, the City and County of Philadelphia.
Second district, Lancaster, York and Dauphin counties.

[9] *Ibid,* p. 201-203.
[10] Smith's L., p. 2380.
[11] 4 Smith's L., p. 270.

Third district, Berks, Northampton and Wayne counties.

Fourth district, Mifflin, Centre, Huntingdon and Bedford counties.

Fifth district, Beaver, Allegheny, Washington, Fayette and Greene counties.

Sixth district, Mercer, Butler, Venango, Crawford and Erie counties.

Seventh district, Delaware, Chester, Bucks and Montgomery counties.

Eighth district, Northumberland, Luzerne and Lycoming counties.

Ninth district, Adams, Cumberland and Franklin counties.

Tenth district, Somerset, Cambria, Indiana, Armstrong and Westmoreland counties.

The seventh, eighth, ninth and tenth districts were new ones, and the Governor was authorized to appoint a president judge for each such district at an annual salary of one thousand six hundred dollars.

By the 19th section it was provided that the Supreme Court should have no original jurisdiction in civil cases, and that no civil action before judgment should be removed from any court of common pleas to the supreme or circuit courts, unless the plaintiff's demand exceeded the sum of one thousand dollars, if the action was removed from the first district, or five hundred dollars if from any other district.

A Middle District of the Supreme Court was created by the Act of April 10, 1807,[12] consisting of the counties of York, Adams, Dauphin, Cumberland, Franklin, Huntingdon, Mifflin, Northumberland, Luzerne, Lycoming, Centre, Clearfield, McKean, Potter and Tioga.

By the fifth section of the Act of March 11, 1809,[13] the circuit courts were abolished, and it was provided that the judges of the Supreme Court should not issue any writ of certiorari or habeas corpus to remove any cause from any county court, the city and county of Philadelphia excepted, but that all causes, indictments or prosecutions in the circuit court or Supreme Court of any county, remaining untried, should be transferred to the appropriate county court from which it was removed, there to be tried and determined. All cases of appeal or error in a circuit court from any county court then pending were to be transferred to the Supreme Court of the proper district for final proceedings. The supreme judges might, however, hold courts of nisi prius in and for the city and county of Philadelphia as theretofore.

By the first section, two additional districts of the Supreme Court were created, one to be called the Lancaster District, consisting of the counties of Lancaster, York, Berks and Dauphin, and the other, to be called the Southern District, composed of the counties of Cumberland, Bedford, Franklin, Huntingdon and Adams.

By the eighth section the number of judges of the Supreme Court was reduced to three. The ninth section provided that persons indicted or charged with any criminal offences in the Mayor's Court of the City of Philadelphia in addition to his right to remove the same into the Su-

[12] 4 *Ibid*, p. 448.
[13] 5 *Ibid*, p. 15.

preme Court, should have the right to have the indictment transferred to and tried in the Court of Quarter Sessions of Philadelphia county.

The Act of March 20, 1810,[14] provided that the Supreme Court should have original jurisdiction within the city and county of Philadelphia in all civil actions wherein the matter in controversy was five hundred dollars and upwards; also that the judges of the Supreme Court should hold courts of nisi prius in that city and county for at least thirty-three weeks in each year, if so long a time was necessary. The fifth section provided that appeals might be taken to the Supreme Court in all cases where the matter in controversy amounted to the value of five hundred dollars or upwards, instead of the values fixed in the nineteenth section of the Act of 1806.

The Act of March 20, 1810,[15] amended and consolidated the laws relative to the jurisdiction of justices of the peace and the practice before those magistrates. A large part of this act is still in force.

The Act of March 30, 1811,[16] provided for the erection of a district court in the city and county of Philadelphia, the jurisdiction and history of which tribunal will be found in another chapter.

Judge Brackenridge states in his "Law Miscellanies," page 27, that in March, 1791, the General Assembly appointed Judge James Wilson of the United States Supreme Court "'to revise and digest the laws of the commonwealth; and to ascertain and determine *how far any British statutes* extended to it, and to prepare bills containing alterations, additions and improvements, as the code, laws, and the principles and form of the constitution then lately adopted, might require.' In a letter on the subject to the speaker of the House of Representatives of the 24th Aug. 1791, he reports some outlines of his system, and the progress he had made. But, as stated by his editor, owing to the want of a provision by the legislature sufficiently ample for the pecuniary expenses necessary to the purchase of books, papers, etc., and the assistants, the design of framing a digest under the authority of the legislature was relinquished. It was considered a great loss by intelligent men that the design should be abandoned; and it continued to be thought of as what ought to be accomplished."

The project was not abandoned, however, and by the Act of April 7, 1807, P. L. 163, it was provided:

That the Judges of the Supreme Court are hereby required to examine and report to the next legislature which of the English statutes are in force in this Commonwealth, and which of those statutes in their opinion ought to be incorporated into the statute laws of the Commonwealth.

This report will be found in an appendix to Volume 3 of Binney's Reports. In the prefatory statement to this report the judges say:

It is provided by the charter that the laws for the regulating and government of property, as well for the descent and enjoyment of lands, as likewise for the enjoyment and succession of goods and chattels, and

[14] *Ibid*, p. 158.
[15] *Ibid*, p. 161.
[16] *Ibid*, p. 223.

likewise as to felonies within the said province, shall be and continue the same as they shall be for the time being by the general course of law in the Kingdom of England until the said laws shall be altered by the said William Penn his heirs or assigns, and by the freemen of the said province, their delegates or deputies, or the greater part of them. Notwithstanding the generality of these said expressions it has always been held that many of these English laws relating both to property and to felonies would have been improper for the state of things in an infant colony, and accordingly they were never extended here. It is the true principle of colonization that the emigrants from the mother colony carry with them such laws as are useful in their new situation and none other. A multitude of English statutes relating to the King's prerogative, the rights and privileges of the nobility and clergy, the local commerce and revenue of England, and other subjects unnecessary to enumerate, were improper to be extended to Pennsylvania. In order to execute the duty required of them it was necessary for the judges to examine the code of English statute law from the beginning to the time of the settlement of Pennsylvania, and to weigh deliberately which were proper to be adopted, but this was not all. It was essential that our own statute books should be examined to see in what cases the English law had been altered, or in what case it had been expressly enacted here. Wherever our own legislature had enacted a law on the same subject on which an English statute was to be found, it has been supposed that the English statute had no force here, even though it contained more extensive provisions than our own act of Assembly, because it was reasonable to presume that our Assembly were acquainted with the English statute and designedly omitted some of its provisions.

In commenting on the report of the judges on the English Statutes, Judge Breckenridge, who was one of the judges making the report, says in his "Law Miscellanies":

It was regretted by them only, that, consistent with their official duties, there was not sufficient leisure to make such enquiries and researches as were necessary to satisfy themselves. For as to what statutes had been introduced, it could be collected only from the memory of the practising lawyer, or notes of cases, in which any particular statute had been considered as extending. Notes were few, and printed reports none, from the settlement of the colony until after the revolution, and the state became independent. Those of Dallas were the first; and these from notes of but some cases furnished by the judges, or rather an individual judge, the Chief Justice. But these reports, even though imperfect as respects the whole state, have been of great utility; and much credit is due to the reporter for his undertaking as well as for the execution. It was chiefly from *the memory of the profession;* or the recollection of admissions or decisions in the course of their practice at the bar, or since they came upon the bench, that the judges could supply the defects of written evidence, as to what statutes had been introduced, and were considered as in force. There was not leisure or opportunity to consult the profession in these particulars, even those of them that were within a narrow compass, and had resided in the city; and, as to those in the country, it was out of the question. There was little or no opportunity of consulting these from their scattered residence. And yet the enquiry was, in part, a matter of tradition, and depended upon the usage. Unwritten common law evi-

dence was, in many cases, all that could be got. No wonder then, that under this haste, the profession should be unwilling that this report of the judges should be considered as *final* or *conclusive*. It could not be so considered even with every advantage of enquiry; for that could only be where the point came in question in the course of a trial, and on a judicial investigation; in which case evidence could be called for, oral or written, to assist the information which the judges might have of their own knowledge.

On March 19, 1810,[17] the following curious act was passed:

That from and after the first day of May next, it shall not be lawful to read or quote in any court in this commonwealth, any British precedent or adjudication which may have been given or made subsequent to the fourth day of July in the year one thousand seven hundred and seventy-six: *Provided*, That nothing herein shall be construed to prohibit the reading of any precedent of maritime law, or of the law of nations.

Referring to this act, Judge Brackenridge in his "Law Miscellanies," published not long after the passage thereof, says:

Were it not that my sentiments are known as having no overweening attachment to British precedents, save so far as they carry with them *natural*, or legal reason, I should be more embarrassed in objecting to this act. But, were it not that I should be unwilling to enter into a contest with the legislature, where public opinion, or prejudice is on their side, I might be disposed to question the *constitutionality* of this act. It would seem to be abridging the right of the judiciary, to hear all reason on a question before them.

"What is't to us
Though it were said by Trismegistus?"

But if we are to hear the saying of a lord, years, or centuries ago, and before the 4th July, 1776, why not what *another lord has said since, to explain or contradict the adjudication?* The fact is, early decisions were, many of them narrow; and why drink out of the neck of a gourd, rather than out of an open goblet; more especially if the fountain was muddy, out of which the gourd was filled; the stream of law in that country now runs more clear in particular cases than centuries ago; and it will always remain so, the law being an improvable science. I like exceedingly when a dictum of a judge, or an adjudication of a court, or tract writer of a semi-barbarous period, is cited, to have it shewn that a more enlightened, and liberal Mansfield or Kenyon or Ellenborough has overruled, or scouted that doctrine. It is shewing from themselves, that they have been wrong; and why should not counsel have this privilege, when old decisions are cited on a point of common, or statute law?

To use a phrase, not meaning disrespect to the learned lords of England, when an old case is cited, contrary to all reason, or good sense, and a new one can be shewn contrary, in the modern decision of another judge, it is like curing according to the vulgar phrase, and vulgar notion, a bite in the *case* of madness, *with a hair of the same dog.*

The act remained upon the statute books until repealed by the Act of March 29, 1836, P. L. 224.

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[17] 5 Smith's L., p. 125.

CHAPTER XXIX.

JARED INGERSOLL, WILLIAM LEWIS, EDWARD TILGHMAN AND JAMES WILSON.

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JARED INGERSOLL, WILLIAM LEWIS, EDWARD TILGHMAN AND JAMES WILSON.

In the year 1859, Horace Binney, under the title of the "Leaders of the Old Bar of Philadelphia," published biographical sketches of Jared Ingersoll, William Lewis and Edward Tilghman, with all of whom he had been personally acquainted in his long and honored life. These sketches were printed in pamphlet form, with paper covers, and it is probable that few copies now remain in existence, for which reason it is thought that the following excerpts from them will be found of interest.

Jared Ingersoll, of the Philadelphia Bar, my learned master in the law, was a native of the colony of Connecticut, and was born at New Haven in the year 1750. His father, of the same name, was a distinguished lawyer in the Colony, and was her agent in England, jointly with Richard Jackson, Lord Grenville's secretary, who was a member of the Parliament which inaugurated Lord Grenville's scheme of taxing the Colonies. . . .

He sent his son, in the year 1774, from the contagious atmosphere of Connecticut, to finish his law education in London. Mr. Ingersoll, the son, continued in that school until shortly before or after the Declaration of Independence, when he embarked for France, and resided there until the autumn of 1778. From that country to his own, he passed in an American letter of marque, *flagrante bello,* and, as I have heard him say, came pretty much under water, from press of sail, to avoid disagreeable interviews on the way.

His London life, from his own account, as well as from that of Edward Tilghman, his cotemporary for part of the time, must have been pretty equally divided between study and pleasure; though in the allotment for the latter, he included a large portion of exercise on foot. In the summer season he lived in the country, ten miles from his place of study in the city, and not unfrequently footed that interval both morning and afternoon. . . .

From relations of friendship between Mr. Ingersoll's father and Joseph Reed, then recently elected a member of the Supreme Executive Council of Pennsylvania, under the Constitution of 1776, and chosen president of that body by the joint ballot of the General Assembly and Council, the son was encouraged by President Reed to remove to Philadelphia for advancement in his profession; and he accordingly removed thither in 1778, was admitted to the Bar in January, 1779, married the eldest daughter of Charles Pettit in 1781, and continued in professional service in that city all the active years of his life, and died there at the age of 72, on the 31st of October, 1822. He had his English education in the law, consequently, some years after he had attained his majority.

Though encouraged to remove to Philadelphia by the President of the Executive Council, and promised his patronage, which no doubt he received as far as it could be afforded, Mr. Ingersoll's success at the Bar, like that of every other lawyer of eminence, was, and must have been, his own work. He received a retainer from the State, during President Reed's administration, as an assistant to the Attorney General, Mr. Sergeant, in the matter of the Proprietary estates, which were *vested* in the Commonwealth, as the Act of Confiscation calls it, in the year 1779: and the Reports show him to have been associated with the counsel of the State in one or two cases in the year 1780.

His professional character, fairly and not partially described, is that of a very sound and well-read lawyer, and a most consummate advocate. Though he was strong as a lawyer in learning, and in the accomplishments which assist the application of it, his great forte was at the bar, in the face of an intelligent jury, and, indeed, of any jury; and second only to that, was his power with the Court. In his full vigor, which continued for nearly twenty years after the year 1797, I regard him as having been without comparison the most efficient manager of an important jury trial among all the able men who were then at the Bar of Philadelphia. His priority in this species of service, was, I think, generally acknowledged. . . .

He was the first attorney general of the State under the Constitution of 1790, and held the office by Governor Mifflin's appointment until Governor McKean's election in 1799, when he retired for, or was superseded by, the son of Governor McKean: and he held the same office by appointment of Governor Snyder, after his election in 1808; and this professional office, and the presidency of the District Court for the City, for a short time in the last years of his life, were the only offices that at any time drew him away from his extensive private practice. Governor Snyder appointed him without his "application or expectation"; and when in that Governor's last term, the secretary of state intimated to him that the governor and others thought that the principal law-officer should reside at Harrisburg, the seat of government, Mr. Ingersoll replied with great diginity in his letter of resignation in December, 1817, that "the governor knew the inconveniences of his residence when he appointed him; and that if they had increased, in his own apprehension, he would have saved the Governor the expression of a wish for his resignation; but that, yielding to the governor's official opinion and authority, he should retire from office, as he entered it, at the Governor's request."

His person, carriage, and manners, and even his dress, had the same aspect in my eyes, and probably in eyes of all who knew him, from his middle life to the very close of it. He was of good height, three or four inches short of six feet, spare of flesh, and perfectly well made and erect, expressing much dignity, with the ease and air of good society. His complexion was fair, and his hair light-colored and his features not large or salient, though sufficiently defined and strong; the lower part of his face, particularly the mouth and chin, being very well developed and expressive. Though to this caste of complexion and features striking expression does not so commonly belong, as it does to faces in which the features are more irregular, and the shadows deeper, yet nothing could be more manly and clear than the whole tone of his countenance. The perpendicu-

lar walls of his head, and the ample roof of the chamber which contained his brain, with the breadth of the lower part of the face, to which I have adverted, gave a very firm and compact appearance to the whole head; and the limner who seized upon these, seized the governing expression of the mass. . . .

His carriage was rather remarkable, and, at this time of day, when familiarity in address and manner is much more common in our courts than it used to be, would be generally remarked. There was a measure, and the observance of breeding in all that he said and did. He was full of attention when you spoke to him, and uniformly regardful of good manners in his reply; but there was little playfulness, no jocularity, nor the slightest attempt at repartee, though he had a keen sense of both wit and humor. When you saw him walk in the street, or pace the floor of the court-room, it was difficult to resist the impression that in early life he had received a military training; and the dress of the pre-democratic age, a full suit of black, or of light brown or drab in the warm season, with knee-breeches and shoes, and long after others had abandoned the usage, hair-powder and a cue, very much assisted the impression. His uniform air of self-possession and purpose, together with the outward attributes I have noticed, gave him decidedly the look of the old officer. But he was entirely free, as the best of that class, of everything like assumption or presumption, or the assertion of command, where it would have been in the least out of place. On the contrary, he gave to every member of the Bar his due in civility and respect, and to those with whom his intercourse was intimate, he was both gracious and cordial.

He passed with some for a rather proud man, perhaps the consequence of this soldierly carriage, and of the forms of life in which he had been bred up, and continued to observe. But the charge in regard to him was even more unjust than it generally is, proceeding as much from that fault in the accuser, as from any serious liability to it in the accused. He had nothing about him, that, in his intercourse with others, whether equals or inferiors, tended to abase anybody. He was not, generally, familiar or communicative. That was the whole. . . .

Mr. Ingersoll had a very considerable body of learning in the law, as well as of general information and literature, that was sufficiently at command; and, in ordinary conversation, you did not perceive any deficiency in it; but when he was cold and unexcited, its flow was by no means rapid, and he was not quick to perceive the bearing of what he knew upon the subject presented to him. . . .

When he rose to a jury, no lawyer could be better prepared with a knowledge of the facts, and of the law that bore upon them; and he chose his point of assault, and his field of defence, with the tact and decision that belong to a first-rate commander. No stratagem of the enemy could seduce him from either. He might be driven from them by force, but not turned by artifice or false attack. His eye was open, and his spirit alert, during the whole contest; and woe betided the adversary that took a false position, or used an illogical argument, or misstated a fact against him. If he felt strong in his case, he might give the error a short correction or rebuke, and pass on to the direct application of his own means; but if he was at all doubtful of his victory, he fastened upon the mistake with the grasp of death, and would repeat and reiterate and multiply his assaults

upon it, until there did not remain a shadow of excuse for the blunder. In such a juncture, his having a weak and doubtful cause, it was of no importance to Mr. Ingersoll, whether the blunder was in a material point or not; for he entertained the opinion, and was much governed by it in practice, and was perhaps more than half right in his impression, that if he could satisfy the Jury that his antagonist was decidedly wrong in anything, they would not always distinguish whether it was in the main thing or not. As to catching him in a blunder, material or otherwise, it was out of the question. The thing never happened. He was infallible in every statement he made, whether of principle or of evidence; and the only hope of the opposite side was to show that what he said might be true, without helping his cause.

He was, moreover, remarkably wary in abstaining from all admissions or concession that could in any way be turned to his prejudice; so much so, that, before a jury, I hardly ever knew him to concede or admit anything. This circumstance, undoubtedly, shows the great vigilance that his mind was called to, in the action in which he was engaged. Nothing is more common than for gentlemen of the Bar to endeavor to win upon the jury by the appearance of candor, in admitting what they think is of no importance at all, to give more color to their sincerity in insisting upon what they deem more important. But Mr. Ingersoll knew its dangers; and without ever being uncandid, he always compelled the adversary to win his cause by his own strength.

He once told me an anecdote that he had heard of Bar practice in one of the States, which, perhaps, had fortified him in his own practice to the contrary. The Bar of that State, as the story ran, were accustomed, when a special verdict, or a case stated, was opened in banc, to relieve one another and the court, by setting forth, orally, what each admitted in his adversary's favor, and therefore would not be disputed by him. On one occasion, when Judge Chase of the Supreme Court of the United States, presided, an old lawyer began to state his admissions, and went on with them with some prolixity, Judge Chase taking a note of them for some time, and then stopping. As the old gentleman persevered to make other admissions, the Judge became restive, and at last broke out: "You may sit down, old gentleman; you need not make any more admissions. You have admitted all your case away, half an hour ago." The practice, if it existed, came to an end probably soon after that.

Jared Ingersoll was the candidate of the Federalist party for Vice-President in 1812, though this fact is not mentioned by Mr. Binney.

William Lewis was born in Chester county about the year 1745. Nothing is known of his family or early history, except that his condition in early life was that of the sons of country people at that time. He became a student of law in the office of Nicholas Waln, an eminent Quaker and highly respectable lawyer, where he mastered enough Latin and French to faithfully read the old entries and reports. He was admitted to the Philadelphia bar sometime before 1776.

During the whole of the Revolution, and for years afterwards, Mr. Lewis was engaged in nearly all the important causes, and especially in cases of high treason, for which he had a special vocation and capacity,

and of which there was a plentiful crop in our City of Brotherly Love, up to the advent of peace. "For the divisions of Reuben, there were great searchings of heart," in those days; and the occupation of the city by the enemy, from the close of September, 1777, to the middle of June, 1778, did not heal nor allay them. Perhaps this city was the only judicial school in the country for the law of treason; and it was in this school that Mr. Lewis got his full growth in crown law, and held his high position in it, pretty much without competition, to the close of the century. In treason causes, he was uniformly on the side of the defendant, and was generally successful; and this was the accident that diffused his reputation so far and so widely. He never showed more vigor, self-possession, and dignity, in subsequent periods of his life, than in this description of cause. His deep learning and facility in the law of treason and of other high crimes, was remarkable. He had studied the law of treason, especially, with passion; and had mastered all its details, the law of its process, evidence, and trial, as well as of the offence itself. He knew every vicious excess that had been perpetrated or attempted in furthering the doctrine of constructive treason, for which he felt the utmost abhorrence. He had at the tip of his tongue, all the gibes and scorns that prosecuting attorneys had spit into the faces of the accused, in the oppressive spirit of former times; and would repeat them with disdain at the first symptom of renewal in his presence. I cannot forget the vehemence, amounting to rage, with which, in rebuke of some harsh general reprobation of a prisoner upon trial, he arraigned, as an example to be forever abjured, the Attorney General Coke, for his brutal language to Sir Walter Raleigh, on the trial of the bye and the main: "Thou Viper! I thou thee, thou traitor."—"Thou art thyself a spider of hell."—"Go to, I will lay thee on thy back for the confidentest traitor that ever came to the Bar." . . .

The prominence of the city of Philadelphia as the seat of the Congress of the Confederation, and her superiority in population and commerce, up to the removal of the seat of the Federal Government to the city of Washington, in 1801, may account, in some degree, for the diffusion of Mr. Lewis's celebrity, which partook of the distinction awarded to the city. But it was not in criminal law alone that he was deemed, by other cities, to be the most able man at the Bar. He was a person of great intellectual ardor, and of a strong grasp of mind; and both in law and politics, and other matters too, he took firm hold of whatever interested him. His great devotion was, of course, to professional studies. He explored every field of law, common, constitutional, international, commercial, and maritime; and with singular predilection, that very intricate close or quarter of the common law, in which the doctrine of pleading is, or formerly was, fenced up from easy access, even against many of the profession. . . .

But it was in the special field of his profession, that Mr. Lewis best exhibited the depth and the purity of his legal learning and principles, and the fine ideal of a great lawyer and advocate by which he was animated. His devotion to the maintenance of the just authority of the Court and jury, and of the rights of the bar, and of the parties and people, which the study of the common law is so apt to inspire, was not less, than to the repression of any unjust assumption by either of them. In criminal causes especially, whatever powers or prerogatives had been given by Magna Charta, the Constitution, or the law, either to the courts or the people, for

the vindication of public justice and order, or for the defence of personal liberty and reputation, had a sleepless guardian in him; and he kindled at nothing sooner than an invasion of any of these great securities, on any side, to the prejudice of either court or jury, or of the independence of the Bar, or of the full exercise of defence against criminal accusation. In professional life constantly, and in public life when he was called to it, his learning and powers of research, his energy, and his oratory, not seldom rising to the highest order of forensic eloquence, were freely devoted to this his almost ruling passion.

He achieved a great victory at the bar, and also in the Legislature of Pennsylvania in the year 1788, when a spirit of factious jealousy, under the lead of a very ardent and determined man, aspired to deprive the Supreme Court of the State of one of its most ancient and necessary powers. As counsel, Mr. Lewis had asserted and maintained the right of the Court to punish Colonel Oswald by fine and imprisonment, without trial by jury, for a contempt of court, in the columns of a newspaper; and in the legislature he defeated a very active effort, by some of the strongest members of the country, to impeach Chief Justice McKean and certain of the judges for having exercised the power. He did this, though McKean was no friend of his, nor he of McKean. The distinction without a difference, except on the wrong side, as to contempts committed out of the presence of the Court, did not then, nor for many years afterwards, prevail; but prevailed finally by positive enactment, rather more perhaps because it was an abridgment of judicial power, the terriculum of the democracy, than for any weightier reason; for the most penetrating and corrupting of contempts, such as requires immediate redress, to take an obstruction out of the very path in which a court of justice is moving at the time, is a contempt out of court, upon the face of a widely diffused newspaper. . . .

The range of judicial questions which occurred between the peace of 1783, with Great Britain, and the end of the last Federal administration of the government, in the year 1801, the most brilliant part of Mr. Lewis's professional life, and when his intellectual powers were certainly in their zenith, was remarkably large and important. Before the country had attained the lawful age of man or woman, the fullest demands for juridical wisdom and experience were upon it. Questions of prize and of the jurisdiction of the admiralty,—questions concerning the rights of ambassadors and the privileges of consuls,—concerning the obligations of neutrality, the right of expatriation, the right of naturalization by the States, the construction of the treaty of peace with Great Britain, the case of the Virginia Debts, and of confiscations and attainders complete or incomplete before the peace, the constitutional powers of the Federal Courts, the powers of Congress, the constitutionality of the carriage tax, the nature and characteristics of direct taxes imposed under the Federal Constitution, —questions of conflict between the authority of the States and of the United States, and between the States severally under the Confederation, and cases of high crimes, both at sea and on land, against the United States, were rising up from day to day for solution; and in most of them Mr. Lewis took a part, and held a position that was worthy of the questions, and worthy of his own powers also.

His general manner in arguing an important cause, cannot be well

appreciated by the reader, without some recollection of his rather peculiar person and countenance; and yet the effect of the whole man in action, was so remote or different from the appearance of his person at rest, that no one could infer the one from the other. At rest, strictly speaking, he never was, while in Court; but when he was not trying or arguing a cause, he was quizzing or joking, or mooting or smoking, generally in a state of unrest. When fully engaged in argument, he saw nothing and thought of nothing but his cause; and, in that, would sometimes rise to the fervor and energy of a sibyl.

He was about six feet in height as he stood, and would have been more if he had been bent back to a perpendicular from the curve,—not a stoop of the shoulders,—in which he habitually inclined forwards. At the same time he was very spare of flesh, and destitute of almost all dimensions but length.

His countenance was intellectual, but its general effect was hurt by his spectacles, and by the altitude and length of his nose, of which, nevertheless, he was immensely proud. The nose so entirely absorbed the expression of his eyes and the rest of his features, that most of the young gentlemen at the Bar, in his time, could draw a striking likeness of Mr. Lewis, by a simple outline of his nose. When the spectacles were entirely removed from his eyes, to see or read near at hand, you perceived that their expression was kindly and gentle; but when he looked through his glasses at the Court or jury, they assumed the expression that belonged to the sentiment or passion that moved him, and sometimes it was a rather truculent one.

He abominated the Gallican invention, as he called it, of pantaloons, and stuck to knee breeches all his life; and, under the same prejudice, he adhered to hair powder and a cue, because the French revolutionists had first rejected them from their armies. When he presented himself, in what he deemed the only forensic dress, a full suit of black and powdered head, even a stranger would expect to hear something worth hearing from that animated and imposing figure; and by the first sentence of his speech, usually addressed, with a self-confident sweep of the head, and in a deep baritone voice, to the Court, and, if necessary, to the jury, the attention of every one would be arrested.

His first attitude was always as erect as he could make it, with one hand insinuated between his waistcoat and his shirt, and the other lying loose upon his loin; and in this position, without any action but that movement of the head, he would utter two or three of his first sentences, generally well-prepared to introduce some notice of the position and solicitude of his client, or some special characteristic of the case, and almost universally, some general principle or truth that he held to underlie his client's cause, and to bespeak the favor of the court and jury. Then, with a quick movement, and sometimes with a little jerk of the body, he would bring both his hands to his sides, and begin the action. And it was pretty vehement action from that time to the conclusion; his head dropping or rising, his body bending or straightening up, and his arms singly or together relieving his head, and doing their part of a rather animated duty, but without a vestige of grace or preparation in any of his movements, all of them, however, sympathizing with the temper or expression of the moment. His voice never failed him. It was deep, sonorous, and clear to the

last; and his pronunciation, without the least monotony or affectation, always conformed to the best standards in the language.

He had one, and I think only one, peculiarity, which never deserted him in solemn speaking, though it was not observable in conversation. It was not, strictly speaking, an accent, nor a pronunciation, but rather had the air of an impediment,—a lingering upon a few unemphatic words, as if he could not get them out. It was no impediment, however; but he dwelt upon them with the purpose of making them more emphatic. Clear and plain were two of these words. He was sometimes faulty in his taste, even in a grave harangue; and one of the recollections of this which remains the most distinctly with me, reminds me of this peculiarity, and at the same time of his sleepless anti-gallicanism.

He was arguing a very grave cause in the Supreme Court of the United States on a morning which had brought the news of some fresh atrocity in the French Revolution; and, after laying down a position of law, and proving or defending it with great strength and skill, having no relation however to France, or to the Revolution, or to anything associated with either, he exclaimed, "And this, may it please your Honors, is as cul-lear and as pul-lain as that the Devil is in Paris, and that nobody can doubt." Plain was always pul-lain, and clear cul-lear, in Mr. Lewis's solemn arguments. There were two or three other words of one syllable, with an "l" as the turning letter, that he clung to in the same manner in his harangues.

It may be perceived, from this account of him, that Mr. Lewis never dozed in his speeches, nor let any one else doze, who was within hearing. Yet he was never vociferous. His voice was not sweet, but it was a fine working voice for a court-room. He was animated, sonorous, and continuous or sustained to the end, without break or pause, except to lift his spectacles, and cast his eye upon his sheet of notes; and he brought all his arguments to a close within a reasonable compass of time.

It would be regarded by every one who knew him, as a defect in this description of Mr. Lewis, if two or three of his maculae, perhaps nebulae, were painted out, or left without notice, since he was as well known by them as by his better parts, and he took as little pains to cover them up. The spots or clouds were in the outward man, and the deepest of them not so deep perhaps as he inclined to have it thought. They did not touch his professional integrity, nor his fidelity to the law.

He smoked cigars incessantly. He smoked at the fireplace in court. He smoked in the court library. He smoked in his office. He smoked in the street. He smoked in bed; and he would have smoked in church, like Knockdunder, in the "Heart of Mid Lothian," if he had even gone there. The servitude was unremitting, as to a most imperious master. It did not look like an accommodation to health or to taste, but like submission to a conquest by external power. The smoking in bed was, in one instance, literally verified by myself and my venerable master, upon a winter journey to the Supreme Court at Washington, in the year 1809, when, in the days of coaching, we passed our first night at the Head of Elk; and I called Mr. Ingersoll's attention to it, after we had got into our respective beds in the same large room, and the last candle had been extinguished. The cigar was then seen firing up from Mr. Lewis's pillow, and disappearing in darkness, like a revolving light on the coast. He was once ordered

into the custody of the marshal by Judge Chase, who affected to believe that the audacity was in some interloper at the chimney corner of the court-room; but Judge Peters explained, sotto voce, and it passed. The cigar did not reappear in that presence. In the Supreme Court of the State it was winked at before the time of Chief Justice Tilghman; but soon after he came to the bench, it was relegated to the Library. It had been tolerated longer because no one imitated the example, and it had the asserted apology of weak health.

There can be no doubt whatever that Mr. Lewis was a very learned lawyer, fully awake to the elevation and dignity of his profession, and prompt to maintain them whenever vindication was necessary, though occasionally unbending a little too much at the side Bar. He was a clear and logical reasoner, and of very vigorous mind, rising at times, in his oral arguments, to the highest eloquence of reason, though no man cultivated less the graces of oratory. He was moreover subtle, ingenious, full of resources, and perhaps as shining an advocate in a bad or doubtful cause, as he was able in a good one. In some points he was not without resemblance to Saunders, his favorite authority, in both the strength and weakness of his parts—something less strong perhaps, and decidedly less weak. He contributed much to elevate the standard of law and of professional effort at the bar; and if he had possessed a little more retenue, might have done as much for the standard of manners, wherein he fell something short; less however in reality, than by contrast with the high professional carriage of his eminent contemporaries.

He died on August 15, 1819, in the sixty-ninth year of his age. His part in the trial of John Fries for treason is referred to in a later chapter.

Edward Tilghman was born at Wye, on the Eastern Shore of Maryland, on the 11th of December, 1750, of an old and respectable family, which in the paternal line emigrated to the province of Maryland from Kent county in England, about the year 1662. His academical education was received in the city of Philadelphia, under teachers who were successful in accomplishing him in the ancient classics to an extent which, at a subsequent time, now happily passed away, it was the poor fashion to undervalue or decry. His education in the law was obtained principally in the Middle Temple, of which he was entered a student about the year 1771; and in the years 1772 and 1773 he became an assiduous attendant upon the court of Westminster Hall, taking notes of the arguments in chancery before Lord Apsley, and of such men as Wallace, Dunning, Davenport, and Mansfield, before Lord Mansfield and the judges of the King's Bench. His note-books are still extant in the possession of his descendants; and one of them was of remarkable use upon the argument of Clayton against Clayton, in the Supreme Court of Pennsylvania, in explaining an obscure report by Sir James Burrow, of Lord Mansfield's judgment in Wigfall v. Brydon, which was cited before the same Judges in Goodright v. Patch, in 1773, and then put upon its true ground. After finishing his course at the Middle Temple, he returned to Philadelphia, and was admitted to the Bar, at which he continued till his death, on the 1st of November, 1815, in the sixty-fifth year of his age. . . .

Tilghman acquired not only great learning, but the most accurate legal judgment of his day at the bar of which he was a member. No one

of his cotemporaries would have felt injured by his receiving this praise. Upon questions which to most men are perplexing at first, and continue to be so until they have worked their way to a conclusion by elaborate reasoning, he seemed to possess an instinct, which seized the true result before he had taken time to prove it. This was no doubt the fruit of severe and regular training, by which his mind became so imbued with legal principles, that they unconsciously governed his first impressions. In that branch of the law which demands the greatest subtlety of intellect, as well as familiarity with principles, the chapter of contingent remainders and executory devises, he had probably no superior anywhere. An eminent judge has said of him, "that he never knew any man who had this branch of the law so much at his finger ends. With all others with whom he had had professional intercourse, it was the work of time and consideration to comprehend; but he took in with one glance all the beauties of the most obscure and difficult limitations. With him it was intuitive, and he could untie the knots of a contingent remainder or executory devise as familiarly as he could his garter." When this can be justly said of a lawyer—and it was said most justly of Edward Tilghman—nothing is wanting to convey to professional readers an adequate notion of the extent of his learning, and the grasp of his understanding; for the doctrines upon these subjects are the higher mathematics of the law, and the attainment of them by any one, implies that the whole domain lies at his feet. Mr. Tilghman was also an advocate of great powers—a master of every question in his causes—a wary tactician in the management of them—highly accomplished in language—a faultless logician—a man of the purest integrity and of the brightest honor—fluent without the least volubility—concise to a degree that left every one's patience and attention unimpaired—and perspicuous to almost the lowest order of understandings, while he was dealing with almost the highest topics. How could such qualities as these fail to give him a ready acceptance with both courts and juries, and to make him the bulwark of any cause which his judgment approved? An invincible aversion to authorship and to public office, has prevented this great lawyer from being known as he ought to have been, beyond the limits of his own country. He has probably left nothing professional behind him, but his opinions upon cases, now in various hands, and difficult to collect, but which, if collected and published, would place him upon the same elevation with Dulany, of Maryland, or Fearne, the author of the work in which he most delighted. The chief justiceship of the Supreme Court of Pennsylvania was offered to him by Governor McKean, upon the death of Chief Justice Shippen; but he declined it, and recommended for the appointment his kinsman, William Tilghman, who so much adorned that station by his learning and virtues.

It is instructive to record, that the stern acquirements and labors of this eminent man never displaced the smiles of benevolence from his countenance, nor put the least weight upon his ever buoyant spirit. His wit was as playful and harmless, and almost as bright, as heat lightning upon a summer's evening. It always lit up the edges of the clouds of controversy that surrounded the bar, and sometimes dispersed the darkest and angriest. A more frank, honorable, and gentlemanly practitioner of the law, and one more kind, communicative, and condescending to the young students and members of the bar, never lived.

The writer of this article, thirty years his junior, regards it as his greatest good fortune to have been admitted to the familiar intimacy of Edward Tilghman, and to have enjoyed not only instruction from his learning and wisdom, but an example of life in his cheerfulness and serenity, during the vicissitudes of health and fortune which chequered his declining years. . . .

Of the perfect confidence of the Judges in his opinions, I will refer to two or three instances in this place.

In the well-argued and important case of Finlay's Lessee v. Riddie, reported in 3 Binney, 139, the question of law was one of those which are sometimes called gordian. It was a devise of an estate to A. for his natural life, and after his decease, if he shall die leaving lawful issue, to his heirs as tenants in common, and their respective heirs and assigns forever; but in case he shall die without leaving lawful issue, then to B., his brother, to hold to him and his heirs and assigns forever. Of course, "the pinch of the case," as Judge Brackenridge called it, was in the word heirs, as first used, whether it was to be regarded as a word of limitation, or as a word of purchase; that is to say, whether A. took an estate tail, or an estate for life only. Chief Justice Tilghman, before whom the cause was tried at a circuit court, told the jury that the inclination of his mind was rather in favor of the opinion that A. took only an estate for life; but as it was a question of considerable difficulty, he would reserve the point; and he directed the jury to find a verdict in correspondence with his inclination. Of the same opinion were all the judges finally. Judge Brackenridge, in giving his opinion, said, "that something was thrown out in the course of the argument at the Bar, by the counsel contending for the estate tail,"—the same gentleman who afterwards, as a Judge of the same Court, so distinctly affirmed the supremacy of Edward Tilghman in this branch of the law,—"of a confidence in what the opinion would be, of the elder of the profession, were it taken on this devise. The case being held under advisement, and it so happening that I had an easy opportunity, I put the case to one of the eldest and ablest of the profession in the State, and totally unconcerned in the matter, but submitted merely as a problem in legal science, in that abstruse part of it, the doctrine of devises and contingent remainders. His note to me I hold in my hands, and will read it." And then follows, in the printed report, without the author's name, a page of short, close, pithy sentences, after the writer's fashion, affirming the estate for life only, and unloosing the knot, "familiar as his garter." The writer of that note was Edward Tilghman.

Another instance of the respect entertained for him by the foremost judge on the bench, occurred in my presence. It was a case in which Chief Justice Tilghman did not concur with the argument of his cousin, and put to him two or three objections, which were answered, and the argument then was pressed in its first direction. At the close, the Chief Justice said, "Mr. Tilghman, I have so much respect for your judgment, and so much knowledge of your sincerity in what you press, that I will look further into the point."

A third occurred in the great case of the Bush Hill estate, Lyle v. Richard, 9 Serg. & Rawle, which grew out of a common recovery, that I had conducted with his support and advice. It was in this case that Judge Duncan said of him, "That, with one glance, he took in all the beauties of

the most obscure and difficult limitations. With him it was intuition." And this was so far true, that it had that appearance. But Mr. Tilghman's intuition, in such cases, took in more than is included in the letter of Mr. Locke's definition. It was not only the immediate perception of the agreement or disagreement of two ideas in the party's own mind, but the immediate grouping of reasons and authorities, and the unconscious comparison of them, and the giving out the true result in a moment, as it happens with an accomplished performer on the organ, who expresses a whole score without consciously perusing the parts of it. This was, in reality, deduction so infinitely quick, that it had the appearance of intuition. . . .

No man talked less at the bar for talk's sake, or less frequently resorted to words for want of thoughts. His plain and direct reasoning was very rarely embellished by anything that was collateral. He kept the narrow and straight way, and culled little or nothing from the fields alongside; yet he intermixed the reasons of the law with its principles, so smoothly and shrewdly, that he never was dry or abstruse. When he began, he generally meant to say all that he afterwards said, rarely or never leaving his path; and when his argument was at an end, he did not utter a word to round it off,—no peroration, no retouching, no supplemental answers to objections,—all had been noticed and disposed of in due order as he advanced. . . .

In no instance did he argue a cause superficially, nor in any did his cousin, Chief Justice Tilghman, decide a cause hastily. The characteristics of both, as to preparation, deliberation, and caution, were the same. The case of Newlin v. Newlin, 1 Sergeant & Rawle, which asserted the right of a married woman to dispose of her separate trust estate, unless restrained by the deed of trust, was argued by Edward Tilghman and John Sergeant, and was decided in banc, after mature deliberation, by Chief Justice Tilghman and Yeates, who delivered full opinions, affirming the right. The case of Dolan v. Lancaster, 1 Rawle, in the time of Chief Justice Gibson, overruled Newlin v. Newlin, and swept away every vestige of authority from a married woman, during coverture, to alienate or pledge her separate trust estate. Chief Justice Gibson said, that "Newlin v. Newlin was hastily determined upon an exception to evidence." He never made a greater mistake, unless when he overruled the authority. It was argued upon pre-existing authorities, which are cited in the report, and came before the Court upon a writ of error to the Common Pleas. It has taken more than one Act of Assembly to patch the hole in the law that was made by Dolan v. Lancaster; and it is not well patched yet. Chief Justice Gibson has delivered good opinions; but he never was less surefooted than when the shadow of his predecessor fell upon his path. Imagine the terror of the old authorities at the flash of his cimiter in Ferree v. The Commonwealth, 8 Serg. & Rawle; "For myself, I shall never consent to give effect to a claim by the husband, or those in his stead, to what was at any time the wife's real estate, where it is possible to defeat it by any construction, however forced!"

But we must not infer, from this account of him, that the knowledge of remainders and executory devises, came to him, or comes to any man, by inspiration. He worked hard for what he knew, and began early. I have read those notebooks, recording his attendance in Westminster Hall, from 1772 to the beginning of 1774; and there, at his age of twenty-two,

I have seen, as any one may, the seeds and plants which grew up into that marvellous intuition. The books are in the form of receipt books, with clasps at the end, of a size to be easily carried in the hand, Law being recorded at one end, and Equity at the other; and are full, it would seem, of all the cases of importance which had been argued in his time. They note the points or questions—the name of the counsel who argued—a summary of their arguments and authorities—the dicta of the judges, and the opinion of the court, sometimes abbreviated almost into short hand, half a word and frequently the initial and final letters being made to stand for a word, connectives being omitted where they could be implied; and there is, in some instances, an authority or a remark of his own, interlined, showing that he had taken the notes in court, perhaps on his knee, and had conned them over in private, especially such as involved great principles, like Goodright v. Patch, where Lord Mansfield explained his opinion in Wigfall v. Bryden, and perhaps damaged that case a little, and in Doe v. Burville, a case of cross-remainders, Campbell v. Power, and other cases, bearing on Mr. Tilghman's favorite subject.

There was the utmost simplicity in his dress, and in his address and manners. Though no man was less a Quaker, no man less affected decorative forms of any kind. He never wore black, that I recollect, at the Bar, nor hair powder, though everybody else wore it; nor appeared to give a thought to his outward appearance, though he was always perfectly well kept. He was rather of short stature, spare of flesh, and of delicate but well-proportioned frame. His complexion was fair, and his brown hair was without a thread of gray in it to the last. His face was oval, his nose slightly aquiline, and the shape of his forehead and chin corresponded with this outline. But his eyes and his mouth were his most expressive features; his mouth even more than his eyes. Whatever was the thought that was to come from him, grave or gay, the motion of his lips, before he spoke, was the harbinger of its character. Indeed, it was not difficult to tell what reception he gave to an argument he was listening to, by the opening and shutting of those flexible and mobile valves. When a little pinched, you might easily discover it, by his chewing one of them, until he had cleared away the difficulty. But over all his countenance, and over all his acts, in Court or out of Court, a kind and intelligent nature had diffused the expression of truth, wisdom, and sincerity. There are few now living, at the Bar, who have any remembrance of his person, and I have therefore given this detail. . . .

Mrs. Tilghman was a daughter of Benjamin Chew, a Chief Justice of the Supreme Court of Pennsylvania before the Revolution, and afterwards president of the High Court of Errors and Appeals.

CHAPTER XXX.

THE FRIES REBELLION.

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The great Rebellion of 1861-65 so far eclipsed preceding insurrections that many of the latter have been lost sight of. It is probable that most readers are familiar, by name at least, with Shays' Rebellion in Massachusetts, in 1786; with the Whiskey Insurrection in the southwestern counties of Pennsylvania, in 1792, and, possibly, with Dorr's Rebellion in Rhode Island, which occurred as recently as 1842. It is thought, however, that Fries' Rebellion, which occurred in the counties of Bucks, Northampton and Montgomery in Pennsylvania in the year 1798, is but little known even to residents of that State. For this reason, a brief account of this insurrection and of the trial for treason of John Fries and other persons active therein, and of their conviction, sentence and ultimate pardon, may be of interest to the readers of this work.

On July 9, 1798, during the administration of John Adams, an Act of Congress was passed providing "for the valuation of lands and dwelling houses and the enumeration of slaves within the United States," and on July 14th an additional act was passed, entitled "An act to lay and collect a direct tax within the United States," fixing the amount to be raised at two million dollars, of which two hundred and thirty-seven thousand one hundred and seventy-seven dollars and seventy-two cents was the portion allotted to Pennsylvania. The rates of assessments under this act began with a rate of two-tenths of one per cent. where the dwelling and outhouses, on a lot not exceeding two acres, were valued at more than one hundred dollars and not exceeding five hundred dollars. The rate increased with the value of the houses and lands, so that a property worth thirty thousand dollars would pay a tax equal to one per cent. of its value. These acts were passed with a view to defraying the expenses of a war with France which was then thought to be imminent.

This law was violently denounced in Pennsylvania but the principal opposition was confined to the counties of Bucks, Montgomery, Northampton and Berks in the eastern part of the State.

Immediately after the passage of these acts, Pennsylvania was divided into nine districts for the purpose of the collection and assessment of the tax, Bucks and Montgomery counties constituting the third district, and Northampton, Luzerne and Wayne the fifth district. The commissioners for these districts divided them into assessment districts and furnished a list of persons qualified for assessors in each, who were appointed as such assessors.

The opposition to the tax appears to have been more general in Mil-

ford township, in Bucks county, and in some of the border townships of Northampton county. The inhabitants of these townships refused to be assessed, offered violence to the person of the assessors, and took away from them their assessment rolls.

The leader of the insurrection was one John Fries, of Milford, by occupation a vendue cryer, a man of little education, but considerable force of character. He had commanded a company of militia during the Revolutionary War, and also commanded a company in the Whiskey Insurrection. At this period he was about fifty years of age, and had theretofore been esteemed a quiet and inoffensive man. He had been a warm supporter of Adams and his administration, but suddenly became their most bitter enemy, giving vent to his feelings in terms of unmeasured denunciation.

Under the leadership of Fries, the inhabitants worked themselves up to such a degree of frenzy that it became utterly impossible to assess the tax, and armed and uniformed forces were raised with the object of opposing the collection of the same.

It being evident that it was beyond the power of the local authorities to enforce the assessment of the tax, application was made to Judge Peters, then judge of the District Court at Philadelphia, who issued warrants for the arrest of some of the persons most prominent in the insurrection, and sent the marshal of his court to serve the same. The marshal arrested a number of persons and took them to Bethlehem, where he held them in custody. While so held, a large number of armed insurgents, consisting of two companies of riflemen and one of mounted men, numbering in all about one hundred and forty, proceeded to Bethlehem and released the prisoners, the marshal having only a small posse of unarmed men to defend them.

No sooner had this been done, however, than the insurrectionists, evidently alarmed at the probable consequences of their acts, quieted down, and it is probable that had the matter stopped here the tax could have been assessed and collected without further trouble. The President being officially informed as to the rescue of the prisoners, issued the following proclamation, endeavoring by this mild means to call the disturbers of the peace back to their duties before resort was made to harsher measures:

By the President of the United States of America:

PROCLAMATION.

WHEREAS, combinations to defeat the execution of the laws for the valuation of lands and dwelling houses within the United States have existed within the counties of Northampton, Montgomery and Bucks, in the State of Pennsylvania, have proceeded in a manner subversive of the just authority of the government, by misrepresentations to render the laws odious, by deterring the officers of the United States to forbear the execution of their functions, and by openly threatening their lives. And, whereas, the endeavors of the well-affected citizens, as well as of the executive officers to conciliate compliance with these laws, have failed of success, and certain persons in the county of Northampton, aforesaid, have been

hardy enough to perpetrate certain acts, which I am advised, amount to treason, being overt acts of levying war against the United States, the said persons exceeding one hundred in number, and armed and arrayed in warlike manner, having, on the seventh day of the present month of March, proceeded to the house of Abraham Levering, in the town of Bethlehem, and there compelled William Nichols, Marshal of the United States, for the District of Pennsylvania, to desist from the execution of certain legal processes in his hands to be executed, and having compelled him to discharge and set at liberty certain persons whom he had arrested by virtue of a criminal process, duly issued for offenses against the United States, and having impeded and prevented the commissioners and assessor, in conformity with the laws aforesaid, in the county of Northampton, aforesaid, by threats of personal injury, from executing the said laws, avowing, as the motive of these illegal and treasonable proceedings, an intention to prevent, by force of arms, the execution of the said laws, and to withstand, by open violence, the lawful authority of the United States. And, whereas, by the Constitution and laws of the United States I am authorized, whenever the laws of the United States shall be opposed, or the execution thereof, obstructed in any State, by combinations too powerful to be suppressed by the ordinary course of judicial proceedings, or by powers vested in the Marshal, to call forth military forces to suppress such combinations, and to cause the laws to be duly executed, and I have accordingly determined so to do, under the solemn conviction that the essential interests of the United States demand it.

Therefore, I, John Adams, President of the United States, do hereby command all persons, being insurgents as aforesaid, and all others whom it may concern, on or before Monday next, being the eighteenth day of the present month, to disperse and retire peaceably to their respective abodes; and I do, moreover, warn all persons whomsoever, against aiding, abetting or comforting the perpetrators of the aforesaid treasonable acts, and I do require all officers and others, good and faithful citizens, according to their respective duties and laws of the land, to exert their utmost endeavors to prevent and suppress such dangerous and unlawful proceedings.

In testimony thereof, I have caused the Seal of the United States of America to be affixed to these presents, and signed the same with my hand. Done at the city of Philadelphia, the twelfth day of March, in the year of our Lord, 1799, and of the Independence of the said United States of America, the twenty-third.

By the President: JOHN ADAMS.

Timothy Pickering, Secretary of State.

As soon as this proclamation was promulgated, meetings were held through the disaffected sections, and almost all objection to the tax disappeared. Fries and his aiders and abettors submitted to the authorities, allowed their property to be assessed, and acquiesced in the law being carried into execution. Under these circumstances it is rather surprising that the following described action was taken by the national authorities.

On March 20th, 1799, the Secretary of War made a requisition on Governor Mifflin for militia forces for the purpose of suppressing the insurrection, and by authority of the Governor four troops of cavalry from

the city of Philadelphia, one from the county of Philadelphia, one from the county of Chester, one from the county of Lancaster, and one from Montgomery county, were ordered to hold themselves in readiness to march for this purpose. To these were added about five hundred regular troops. The President also made requisition on the executive of New Jersey for two thousand militia to hold themselves in readiness to march. This imposing military force set out from Philadelphia on April the 4th, and in a few days occupied the entire disaffected region. They arrested Fries and many others prominent in the insurrection. These arrests seemed to have been accompanied with unnecessary severity, and a veritable reign of terror existed while the troops were in the field, as appears from numerous letters which were written at the time by officers accompanying the expedition.

As an example, while the troops were at Reading, members of the Lancaster Light Horse, commanded by Captain Montgomery, dragged Jacob Schneider, the editor of the "Reading Adler," to the market house and publicly whipped him, by the order of the captain. Complaint of this outrage was made to General McPherson, commanding the troops, but he did nothing, and no redress could be had. Mr. Schneider was an anti-Federalist.

It is related that one of the captured was brought before a well known magistrate and was anxious to know the fate that awaited him, to which the official replied with becoming dignity, "In a fortnight the circuit court will meet, when you will be tried, and, in a fortnight after, will be in hell, sir." This circumstance is mentioned to show the bitterness of the times.

The next day after the arrest of Fries, he was taken before Judge Peters, who had accompanied the troops, and his statement was reduced to writing and signed by him as follows:

THE EXAMINATION OF JOHN FRIES, APRIL 6, 1799.

The examinant, confesses that he was one of the party which rescued the prisoners from the Marshal at Bethlehem; that he was also one of a party that took from the assessors, at Quakertown, their papers and forwarned them against the execution of their duty in making the assessments. The papers were delivered with the consent of the assessors, but without force: perhaps under the awe and terror of the numbers who demanded them, and were by this examinant delivered to the assessors. He confesses that, at the house of Jacob Fries, a paper was written on the evening preceding the rescue of the prisoners at Bethlehem, containing an association or agreement of the subscribers to march for the purpose of making that rescue; but he is not certain whether he wrote that paper. He knows he did not sign it, but it was signed by many persons and delivered to the examinant; he does not know where the paper is. The examinant confesses, also, that, some weeks ago, he wrote (before the assessors came into that township) an agreement which he, with others, signed, purporting that, if an assessment must be made, they would not agree to have it done by a person who did not reside in the township, but they would choose their own assessor within their township. A meeting has been held in the township since the affair at Bethlehem for the purpose of

making such a choice; examinant went to the place of election, but left it before the election opened. The examinant further acknowledges that his motive in going to Bethlehem to rescue the prisoners was not from personal attachment or regard to any of the persons who had been arrested, but proceeded from a general aversion to the law, and an intention to impede and prevent its exaction. He thought that the acts for the assessment and collection of a direct tax did not impose the quota equally upon the citizens and therefore were wrong. He cannot say who originally projected the rescue of the prisoners, or assembled the people for the purpose. The township seemed to be all of one mind. A man, unknown to the examinant, came to Quakertown, and said the people should meet at Conrad Marks' to go to Millarstown. The examinant says that, on the march of the people to Bethlehem, he was asked to take the lead, and did ride on before the people until they arrived at Bethlehem. The examinant had no arms, and took no command, except that he desired the people not to fire until he should give them orders, for he was afraid, as they were so much enraged, there would be bloodshed. He begged them, for God's sake, not to fire, unless they had orders from him, or unless he should be shot down, and then they might take their own command. That he returned the papers of the assessors, which had been delivered into his hands, back to the assessors privately, at which the people were much enraged, and suspected him (Fries) of having turned from them, and threatened to shoot him, between the house of Jacob Fries and Quakertown.

JOHN FRIES.

Taken April 6, 1799, before Richard Peters.

Fries and the other prisoners were taken to Philadelphia and confined in the common jail there until trial in the circuit court of the United States, which commenced its session in Philadelphia, April 11, 1799, the Hon. James I. Iredell, one of the associate judges of the Supreme Court of the United States, being on the bench.

After the court was duly opened for business, Judge Iredell delivered his charge to the grand jury. He reviewed at considerable length the alien and sedition laws, argued their constitutionality, and said they were called for by the spirit of the times. He contended in advance of the trial and in the absence of testimony to sustain his opinion, that the crime of which Fries was charged was treason, which, he said, consisted in opposing by force of arms the execution of any acts of Congress. The grand jury returned as a true bill the following indictment:

Indictment in the Circuit Court of the United States of America, in and for the Pennsylvania District of the Middle Circuit:

The Grand Inquest of the United States of America, for the Pennsylvania District, upon their respective oaths and affirmations, do present that John Fries, late of the county of Bucks, in the district of Pennsylvania, he being an inhabitant of, and residing in the said United States, to wit, in the district aforesaid, and under the protection of the laws of the said United States, and owing allegiance and fidelity to the same United States, not having the fear of God before his eyes, nor weighing the duty of his said allegiance and fidelity, but being moved and seduced by the instigation of the Devil, wickedly devising and intending the peace and

tranquility of the said United States to disturb, on March 7, in the year of our Lord one thousand seven hundred and ninety-nine, at Bethlehem, in the county of Northampton, in the district aforesaid, unlawfully, maliciously and traitorously did compass, imagine and intend to raise and levy war, insurrection and rebellion against the said United States; and to fulfill and bring into effect the said traitorous compassings, imaginations and intentions of him the said John Fries, he the said John Fries, afterwards, that is to say, on March seventh, in the said year of our Lord, one thousand seven hundred and ninety-nine, at the said county of Northampton, in the district aforesaid, with a great multitude of persons whose names at present are unknown to the Grand Inquest aforesaid, to a great number, to wit, to the number of one hundred persons and upwards, armed and arrayed in a warlike manner, that is to say, with guns, swords, clubs, stones, and other warlike weapons, as well offensive as defensive, being then and there unlawfully, maliciously and traitorously assembled and gathered together, did falsely and traitorously assemble, and join themselves together against the said United States, and, then and there, with force and arms, did falsely and traitorously, and in a warlike manner, array and dispose them against the said United States, and then and there, with force and arms, in pursuance of such their traitorous intentions and purposes aforesaid, he, the said John Fries, with the said persons so as aforesaid traitorously assembled, and armed and arrayed in the manner aforesaid, most wickedly, maliciously and traitorously did ordain, prepare and levy public war against the said United States, contrary to the duty of his said allegiance and fidelity, against the Constitution, peace and dignity of the said United States, and also against the force of the Act of the Congress of the said United States, in such case made and provided.

WILLIAM RAWLE,
Attorney of the U. S. for the Pennsylvania District.

The case was called for trial on April 30, 1799, Alexander J. Dallas, father of Vice-President Dallas, and Messrs. Ewing and Lewis, representing the defendant. The United States was represented by Messrs. Rawle and Sitgreaves, the latter a resident of Easton, and at that time the United States Attorney for the Pennsylvania District. When the case was called, Mr. Lewis made the following motion in writing:

And now the prisoner, John Fries, being placed at the bar of this Court, at the city of Philadelphia, being the place appointed by law for holding the stated sessions thereof, and it being demanded of him if he is ready for his trial for the treason in the indictment mentioned, he moves, ore tenus, that his trial for the same offence may not be proceeded on here, and that the same may be had in the county in which the same acts of treason in the said indictment mentioned are laid, and where the offence therein mentioned is alleged to have been committed.

The application was founded on the Judiciary Act of September 24, 1789, the twenty-ninth section of which provides, "that in cases punishable with death, the trial shall be had in the county where the offense was committed; or where that cannot be done without great inconvenience,

twelve petit jurors at least shall be summoned from thence." The court over-ruled the motion, and fixed the trial for the first day of May.

On that date the prisoner was duly arraigned, pleaded not guilty and a jury was impaneled. Mr. Sitgreaves opened the case on the part of the United States. He said "treason is defined in the Constitution of the United States, Section 3, Article III, in the words following: 'Treason against the United States shall consist only in levying war against them or in adhering to their enemies, giving them aid and comfort.'" He charged that Fries was guilty of treason in levying war and proceeded to elaborate upon the phraseology used in our Constitution, which is borrowed from the Statute of Edward III. He then passed to an exposition of the full meaning of the word treason, and pointed out what is necessary to constitute that crime; that, according to the definition of Lord Hale, it must consist both in levying war and in levying war against the Government of the United States. If the people assembled in a hostile manner only to gratify a spirit of revenge, or for any other purpose independent of war against the United States, it would amount only to a riot. He reviewed the leading operations of Fries and his friends, pointing out their combinations and conspiracy to resist the Federal authorities, and their actual resistance with arms at Bethlehem. He then called the witnesses to prove the facts stated in his opening. At this stage of the trial the confession of Fries above given was read.

The prosecution having rested, Mr. Dallas remarked that they desired to call two or three witnesses to prove that the unwillingness of the insurgents to permit the assessments to be made was owing to the uncertainty they were in of the real existence of the law; that the prisoner himself believed that it was no law, and that he and his associates had no intention of opposing Congress by force of arms, but wished for time in which to ascertain whether it was really in force, and, if so, they wished to appoint assessors from their own respective townships agreeably to their former custom; that it could be shown that Fries was perfectly quiescent after the proclamation. He then proceeded to an examination of the law of treason, and argued that none of the acts complained of amounted to that crime.

After Mr. Rawle had argued the constitutional definition of treason, Mr. Dallas opened the case for the defendant. He reviewed all the testimony of the witnesses, and denied that any of the facts proved established anything like the levying of war against the United States. He argued that treason could not be made out of the alleged facts, and that at most they were guilty of nothing but a conspiracy to resist the execution of an unpopular law. Having concluded he called three witnesses to prove the facts he had alleged.

The jury was charged by both judges at considerable length, showing a strong bias against the prisoner, and after an absence of about three hours the jury returned with a verdict of guilty. The court met on the fourteenth day of May to pronounce sentence, when Mr. Lewis asked for a rule to show cause why a new trial should not be granted, which caused

judgment to be suspended, and the prisoner was remanded back to prison. The ground upon which this motion was based was that one of the jurymen at the trial had declared a prejudice against the prisoner after he was summoned as a juror. Finally a new trial was ordered.

The second trial of John Fries took place on April 29th, 1800, Judge Chase presiding, assisted by Judge Peters, of the District Court. Mr. Dallas and Mr. Lewis, who had represented Fries at the first trial, withdrew from the case at its beginning, because of the course of the judges in laying down their opinions as to the law before hearing counsel. They alleged that this proceeding was not only illegal, but unprecedented, and they therefore declined to have anything more to do with the case. This conduct of Judge Chase afterwards became the subject of the first of the articles of his impeachment, on which he was tried before the United States Senate in February, 1805. Their withdrawal left Fries without counsel, and as he expressed no desire to have counsel assigned to him he was without legal assistance during the trial.

The result of the second trial was the same as that of the first, and on May 2, 1800, he was sentenced to be hanged by the neck until dead. On May 23, 1800, the President issued a proclamation extending pardon to all persons concerned in the Rebellion, except such as stood indicted or convicted of treason in connection therewith. This proclamation did not embrace the cases of Fries and two of his associates, who were already under sentence, but a special pardon was made out for them a few days afterwards, very much against the wishes of the Cabinet.

Thus, not unhappily terminated the Fries Rebellion. It is unnecessary to say that politics figured in it from beginning to end; the Federalists contending that Fries was guilty of treason and should suffer the extreme penalty of the law; the Democrats claiming that he was the victim of tyranny and oppression. In view of the frenzy of the people and their lack of discipline, it was extraordinary that no lives were lost at the rescue of the prisoners at Bethlehem.

Horace Binney, in a sketch of the life of William Lewis, in his "Leaders of the Old Bar of Philadelphia," published in 1859, gives the following account of the trial of Fries:

He [Lewis] had been counsel for John Fries, an insurgent of Northampton County, in Pennsylvania, upon a former trial before Mr. Justice Iredell, of the Supreme Court of the United States, and Peters the District Judge, upon an indictment for treason, where the law had been fully discussed, and Fries had been convicted. A new trial was awarded by the Court, on the ground of declarations by a juror, ascertained by the defendant and his counsel after the verdict had been rendered. Before a jury was empanelled for the new trial, Mr. Justice Chase, of Maryland, who was in the seat before occupied by Judge Iredell, informed the Bar, that the Court had made up their opinion upon the law of treason involved in the case; and to prevent being misunderstood, they had reduced it to writing, and had directed copies to be made for the District Attorney, the counsel of Fries the prisoner, and the jury; which were then handed for distribution to the Clerk of the Court, who placed them on the table at the

Bar. Mr. Lewis with some deliberation and solemnity rose from his seat, slowly approached the papers, and lifting one of them to his eyes, gave a short glance at it, and threw it down upon the table. He then withdrew, and retired from the place he had occupied, without uttering a word. Mr. Edward Tilghman approached him, said a few words to him about the innovation, and after the transaction of some other business, the Court adjourned for the day. On the next morning when the cause was called, Mr. Lewis informed the Court, that upon full and solemn consideration, he declined proceeding as counsel for the prisoner, as the Court had prejudged the law; and Mr. Dallas, his colleague, declared himself to the same effect, though with a hesitation, he said, which he would not have felt, if the Court had not appointed him as assistant counsel for the prisoner. There was profound silence, and deep sensation at the Bar, and the Court had no doubt been previously led to expect it; for Judge Chase informed the counsel, that they were not bound by the opinion, but might contest it on both sides, and Judge Peters expressed a wish that the counsel would proceed, and take the course they should think proper. The papers, he said, were withdrawn. The Judge had probably deferred to Judge Chase, and let the papers go as the opinion of the Court, without any very cordial sanction. Mr. Lewis, with few, but distinct and solemn words, replied: "The Court has prejudged the law of the case—the opinion of the Court has been declared—after such a declaration, the counsel can have no hope of changing it,—the impression of it must remain with the jury,—the counsel, therefore, will not act in behalf of the prisoner." The effect was electric; for Mr. Lewis had the full sympathy of the Bar.

Judge Chase, however, did not forget his personal dignity, nor the dignity of the Bench, upon hearing this definitive reply. He immediately rejoined to the effect, that then, with God's help, the Court would be the counsel of the prisoner, and would see that he had a fair trial. And no doubt he had a fair trial, and was convicted a second time, and sentenced to death. But the pardon that ensued was not improbably induced, in part, by what had happened. The life of the prisoner was saved, and the conduct of Judge Chase was made an article of the impeachment subsequently preferred against him by the House of Representatives; and sixteen out of thirty-four senators recorded against him, upon that charge, the vote of guilty. The larger number voted for his acquittal, upon the ground, probably, of the absence of all corrupt or oppressive intention. It was acknowledged that the previously declared opinion of the Court had been sound in point of law.

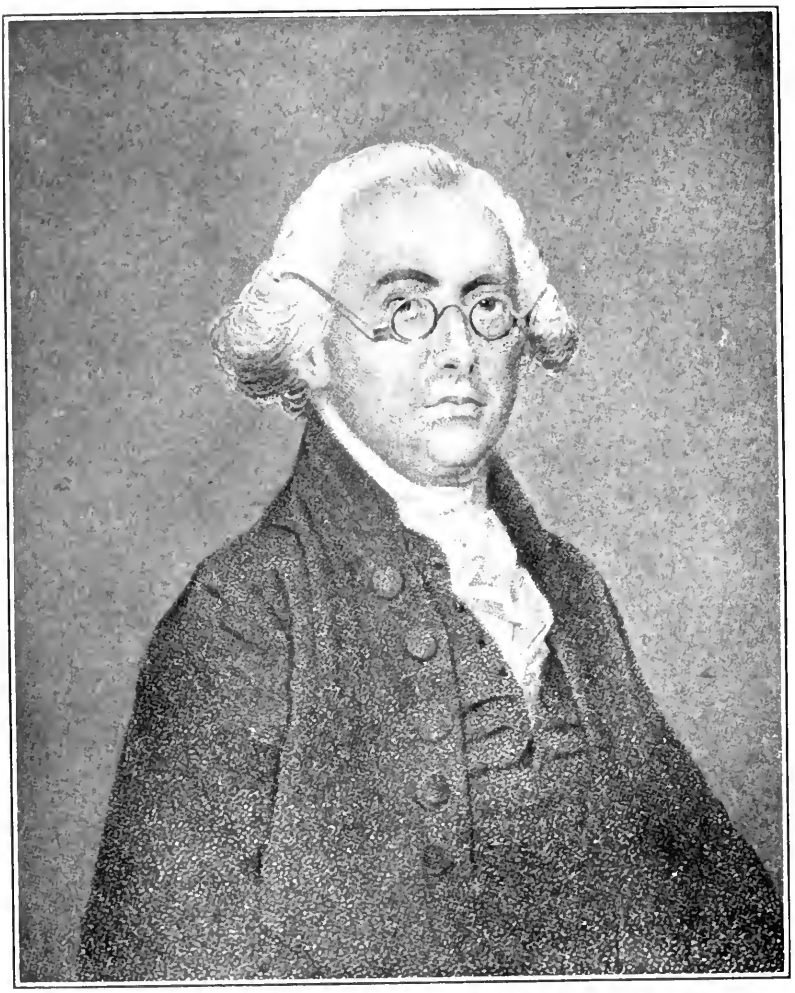
I was present at this scene, in April, 1800, and have given it as my memory retains it. The act of the Court was not regarded by the Bar as one of intended oppression of either the prisoner or his counsel, but as a great mistake, resulting, in part, from the character of the principal judge, a very learned and able man, but confident and rather imperious, and in part from his greater familiarity with the Maryland practice, where the Judge used to respond, and perhaps still does, more exclusively, for the law, and the jury for the facts, or rather more dividedly or separately than was, in point of form, the usage in Pennsylvania. In a criminal cause like this, however, the course of the Court would probably have been regarded as a mistake anywhere. It served as a signal lesson to stimulate

the sense of professional independence, and of the jury, in criminal causes; and fitly closed Mr. Lewis's career in this description of case.

A full account of this insurrection may be found in "The Fries Rebellion, 1798-99, An Armed Resistance to the House Tax Law passed by Congress July 9, 1798, in Bucks and Northampton Counties, Pennsylvania, by W. W. H. Davis, A. M.," Doylestown, Pennsylvania, 1899.

CHAPTER XXXI.

JAMES WILSON AND OTHER LAWYERS OF THE LATE EIGHTEENTH CENTURY.



JAMES WILSON

CHAPTER XXXI.

James Wilson and Other Lawyers of the Late Eighteenth Century.

James Wilson, the first member of the Supreme Court of the United States to be appointed from Pennsylvania, was born in St. Andrews, Scotland, on September 14, 1742. He was educated at Glasgow and Edinburgh, where he acquired a knowledge of the civil law which led a biographer to call him "the greatest English speaking civilian of the age in which he lived." He removed to New York at the age of twenty-one, and after spending some time there, removed to Philadelphia, where he became a tutor in the Latin Department of the Philadelphia College and Academy. He then was admitted as a student of law in the office of John Dickinson, and was in due course admitted to the bar. He removed to Reading, where he remained for a short time, thence went to Carlisle, where he resided until 1777, going from there to Maryland, where he remained for one year, and finally settled in Philadelphia in 1778, in which city he soon attained a high standing in his profession.

While living in Carlisle, he began the publication of political pamphlets which greatly influenced his contemporaries. In 1774 he published a pamphlet entitled "Considerations on the Nature and Extent of the Legislative Authority of the British Parliament," in which he totally denied the authority of the Parliament over the colonies. In collaboration with Bishop White he published a number of essays under the title of "The Visitant."

On May 6, 1775, he was elected to the Continental Congress, and was afterwards reëlected on November 3, 1775, July 20, 1776, and March 10, 1777. While a member of Congress, Wilson was one of the most active and influential of its members. In 1781 he was appointed by the King of France, Advocate General of the French Nation in the United States.

In 1779 Wilson, who had distinguished himself in the defense of persons accused of disaffection to the new government, was attacked by a mob which laid siege to his house then situated on the corner of Third and Walnut streets, in Philadelphia. Among those besieged with him were Morris, Bird, George and David Clymer, General Mifflin, and others to the number of thirty or forty. The mob attacked the house with cannon, which were, however, poorly served, and finally forced the door of the house, but were driven off by the first troop of city cavalry. One inmate of the house, Captain Campbell, was killed, and Mr. Mifflin and Mr. Morris were wounded. A man and a boy of the attacking party were

killed, and a number wounded. The punishment intended by the mob for Wilson was banishment to the British in New York.[1]

In 1781 Wilson was appointed by Congress one of the directors of the Bank of North America, and while serving in that capacity wrote in defense of the bank a pamphlet entitled "Considerations on the Power to Incorporate the Bank of North America." In June, 1782, he was appointed counsel and agent for Pennsylvania in the controversy between that State and Connecticut in regard to the "Connecticut Claims." He was reëlected to Congress in 1785, and again in 1786. He was a delegate to the convention held for the purpose of framing a constitution for the United States, and took a leading part in the deliberations of that body. In Sanderson's "Lives of the Signers" it is said that a member of the convention said that the most able and useful members of the convention were James Wilson and James Madison. But his services in the convention, and later, in securing the adoption of the constitution, belong to his political career, with which we have here nothing to do.

In September, 1789, Washington signed the Judiciary Act and nominated the members of the Supreme Court of the United States, among whom was James Wilson as an associate justice. He was the fourth associate justice to receive his commission.

In 1789 the College of Philadelphia established a professorship of law, of which Mr. Wilson was the first incumbent. The college was soon afterwards consolidated with the University of Pennsylvania, and he thus became the first professor in law of that university. The first lecture was delivered in the winter of 1790, and at its conclusion the degree of Doctor of Laws was conferred upon Wilson. Other lectures followed during the winter, and a second course was begun the following year, but for some unknown reason was not finished.

James Wilson was twice married. First, to Rachel Bird, the youngest daughter of William Bird, of Bucks county, Pennsylvania, who bore him six children, and died in 1776. His second wife was Hannah Gray, daughter of Ellis Gray, a merchant of Boston, who survived him. The only son of this marriage died in infancy.

Among the students whom Mr. Wilson received in his office were Bushrod Washington and Samuel Sitgreaves. Mr. Wilson died at the comparatively early age of fifty-six years, on the 28th day of August, 1798, while on circuit in North Carolina. William Rawle, in an address delivered to the associated members of the Bar of Philadelphia in 1824, elsewhere herein referred to, gave his recollections of Wilson as follows:

Perhaps few of those now present can recollect Wilson in the splendour of his talents, and the fulness of his practice. Classically educated, and in the outset employed as a tutor in a public seminary, his subsequent success in a narrow circle of country courts encouraged him to embark in the storm which after the departure of the British troops agitated the forum of Philadelphia.

[1] Graydon's "Memoirs of his Own Time," p. 333.

The adherents to the royal cause were the necessary subjects of prosecution, and popular prejudice seemed to bar the avenues of justice. But Wilson, and Lewis and George Ross, never shrank from such contests, and if their efforts frequently failed, it was not from want of pains or fear of danger.

Other questions of the highest moment also became the daily subjects of forensic discussion, questions for which previous study no doubt had qualified them, but with which no previous practice had familiarized them. In respect to them, Wilson soon became conspicuous. The views which he took were luminous and comprehensive. His knowledge and information always appeared adequate to the highest subject, and justly administered to the particular aspect in which it was presented. His person and manner were dignified, his voice powerful, though not melodious, his cadences judiciously, though somewhat artificially, regulated. His discourse was generally of a reasonable length; he did not affect conciseness nor minuteness, he struck at the great features of the case, and neither wearied his hearers by a verbose prolongation, nor disappointed them by an abrupt conclusion. But his manner was rather imposing than persuasive, his habitual effort seemed to be to subdue without conciliating, and the impression left was more like that of submission to a stern, than a humane conqueror. It must, however, be confessed, that Mr. Wilson on the bench was not equal to Mr. Wilson at the bar, nor did his law lectures entirely meet the expectation that had been formed.

Of other members of the Philadelphia Bar about the time of the Revolution, Mr. Rawle, in the address hereinbefore referred to, spoke as follows:

In those times the sphere of the lawyer was somewhat limited. In provincial courts no great questions of international law were discussed—no arguments on the construction of treaties—no comparisons of legislative powers with constitutional restrictions—even admiralty cases had little interest—everything great and imposing was reserved for the mother country. Till the ebullitions produced by the stamp act, political interests were local and confined. Pennsylvania was divided between two parties, that of the proprietaries and a considerable section of the people.

Two lawyers, Galloway and Dickinson, took active parts in this controversy. Each published a speech which he had delivered in the legislative assembly; and it was remarkable that the introduction to each (one composed by Dr. Franklin, who co-operated with Galloway in opposing the proprietary interest, and the other by Dr. Smith, the coadjutor of Dickinson,) were at the time more admired than the principal compositions. Yet they were both men of talents.

Of Galloway's manner I have no personal knowledge; from inspection of the dockets his practice appears to have been extensive. He adhered to the royal cause, and migrated to England, where, after exciting considerable public attention by attacks on the conduct of Sir. W. Howe in this country, he remained till his death.

Very different were the opinions and procedure of Dickinson. At the commencement of our difficulties with Great Britain he displayed his powers with fervour and courage in defence of what he deemed his country's rights. Assuming the title of a Pennsylvania farmer, he assailed with a

due proportion of learning and an irresistible cogency of argument the unjust attempt of the British legislature to impose internal taxation on the colonies. These publications had the happiest effect. The resistance which seemed at first to be founded rather on natural impulse than deliberate research was clearly shown, not only to be meritorious in itself, but justifiable under the laws and constitutions, by which all British subjects ought to be governed. Of Dickinson's manner of speaking I have some recollection—he possessed, I think, considerable fluency, with a sweetness of tone and agreeable modulation of voice, not well calculated however for a large audience. His law knowledge was respectable, though not remarkably extensive, for his attention was more directed to historical and political studies. In his defensive publications against the attacks of Valerius, in 1783, the man of taste will be gratified by a pure and elegant style, though the statesman must discover some political errors. Wholly engaged in public life, he left the bar soon after the commencement of the revolution.

At this period a new band arose. . . . They contributed, with other instances to prove, notwithstanding the arrogance of European prediction, that America, even at the instant of putting on the *toga virilis,* was equal to the duties of mature and accomplished man.

The talents of George Ross were much above mediocrity. His manner was insinuating and persuasive, accompanied with a species of pleasantry and habitual good humor. His knowledge of the law was sufficient to obtain respect from the court, and his familiar manner secured the attention of the jury. But he was not industrious, and his career after the commencement of the revolution was short.

The powers of Reed were of a higher order. His mind was perspicacious, his perceptions quick, his penetration great, his industry unremitting. Before the revolution he had a considerable share of the current practice. His manner of speaking was not, I think, pleasing; his reasoning, however, was well conducted, and seldom failed to bear upon the proper points of controversy. When he had the conclusion of a cause, he was formidable. I have heard an old practitioner say that there was no man at the bar whom he so little liked to be behind him, as Joseph Reed.

Bradford was the youngest of those who flourished at this active and interesting period, and his history merits the attention of the younger part of my brethren, as indicating that however discouraging the prospect may be, one should never despair. I have understood that for three or four years after his admission he had scarcely a single client, his circumstances were so slender and his hopes so faint that he had at one time determined to relinquish the profession and go to sea, but his abilities, though known to few, were justly appreciated by Mr. Reed, then president of the Supreme Executive Council.

On the resignation of Mr. Sergeant, in 1780, he was unexpectedly appointed attorney general. At that time the office required no feeble hand. The executive administration was involved in the most serious responsibilities. The ability of his predecessor had been eminently useful to them. If Bradford had proved unequal to its duties, the appointment would have covered both him and the administration with disgrace; if otherwise, it elevated him to honour, while it highly promoted the political interests he belonged to—the latter was the result. Those of his brethren who had only noticed him as a mute and humble attendant on the

courts, now watched his progress with political if not professional jealousy, and soon perceived with surprise the first displays of eloquence in a style not common, of knowledge not suspected, of judicious management not frequent in youth.

He advanced with a rapid progress to an eminence of reputation which never was defaced by petty artifices of practice or ignoble associations of thought; his course was lofty as his mind was pure; his eloquence was of the best kind; his language was uniformly classical; his fancy frequently interwove some of those graceful ornaments which delight when they are not too frequent and do not interrupt the chain of argument. Yet his manner was not free from objections; I have witnessed in him what I have occasionally noticed in the public speeches of Charles Fox—a momentary hesitation for want of a particular word—a stopping and recalling part of a sentence for the purpose of amending it; nor was his voice powerful nor always varied by those modulations of which an experienced orator knows the utility.

His temper was seldom ruffled and his speeches were generally marked by mildness. The only instance in which I remember much animation was in a branch of the case of Gerard vs. Basse and Soyer, which is not in print. The principal case is in 1st Dallas, 119; he was concerned for the unfortunate Soyer.

CHAPTER XXXII.

IMPEACHMENTS OF JUDGES.

CHAPTER XXXII.

Impeachments of Judges.

We have seen that the first Chief Justice of Pennsylvania was impeached, but after the impeachment of Chief Justice More no other judge appears to have been impeached for nearly one hundred years.

In December, 1780, Francis Hopkinson, judge of the Court of Admiralty, was impeached by the Assembly, charged with receiving presents from persons interested in condemnation of prizes, encouraging the sale of prizes before condemnation, improperly issuing a writ of sale, and exacting illegal fees in a prize case. These charges were preferred by Matthew Clarkson, the marshal of the court, who had been dismissed at Hopkinson's instance. The trial was before the Supreme Executive Council, Smith and Galbraith managing for the Assembly with Attorney General Bradford, while James Wilson appeared for Hopkinson. He was acquitted upon all charges, although the Council thought that the fees were excessive. These, however, were according to the regular practice of the court.

The Constitution of 1790 had provided that the tenure of judges of the judiciary should be for life. The judges being almost all Federalists, the party in opposition naturally disapproved of these life tenures, and several impeachment trials resulted.

In 1800 and for some years later, the courts, especially the Supreme Court, were extremely unpopular with the people. Judge Brackenridge, who was one of the justices of the Supreme Court, in an article entitled "An enquiry into the causes of that obloquy under which the Supreme Court of this State labored from the year 1800 down, during a period of several years," contained in his "Law Miscellanies," attempts to explain this unpopularity as follows: First, "that three of the four Supreme Court justices were so connected by affinities that they seemed to be but one person. Second, that the same three of the four from wealth and connection and supposed political ways of thinking, were all of the aristocracy of the commonwealth." The third reason is as follows:

> It was a radical error that the whole four judges, suffered themselves to be occupied a considerable part of their time, sitting upon a jury trial. It was a monstrous misapplication of their service, or arrangement of their duties. I saw the error, and knew the dissatisfaction that it occasioned both with bar and country; but though remonstrating to the court themselves, and to individuals of them, I could not prevail in effecting an alteration. Each admitted the evil, but no change could be brought about. How or why the obstinacy of the habit which had been established, I may suspect, but I cannot develope. The bar have

always to me disclaimed any approbation of it, or that they were the cause of its continuance. But be it as it may, this was a substantial cause of dissatisfaction with the court, producing a delay in trials. For, as four men cannot walk four miles, sooner than one man, it is of no use to have four as to the effect of expediting the journey. The truth is, it was a source of great delay, to have four on a jury trial. A paper offered in evidence must be read by the presiding judge, and a note taken of it. It then comes to the second who must read, and note also; and to a third, and a fourth who has the same right to read and note; and, if he does not, at least read, he is under a disadvantage in understanding the cause. By the time it came to a fourth, which was my place, I found by both bar, and country, such an impatience at the vexatious delay, that I was led to dispense with looking at it all, and to content myself with catching the substance from the argument of the counsel, or the hearing it curiously read by them, with out seeing it, which at all times fixes the impression of the contents more forcibly upon the mind.

It happened that the two assistants immediately preceding me, took notes, at great length, so that in copying a paper there seemed to be no end. The delay of trials, therefore, by this, and other means, was a great cause of dissatisfaction with the administration of justice. I say *other means,* because, the trial was protracted by the *taking notes at great length of the testimony of witnesses;* and there was a constant cry of, "wait until I take that down," expressed by bar or court.

The bringing many books, and reading cases at great length, was another means of the delay of trials; *together with the long comments made by counsel on the application of the authorities.* But I come now to a

4th. Or greater cause, than all these; the *constitution* of *circuit courts.* These had succeeded to the *nisi prius* courts and were of the same nature, save that judgment *could be rendered,* at these courts, but *subject to revision in term.* It was the arrangement that *two judges* sat on trials at these courts; though not made necessary by the act under which these courts were constituted. This was unnecessary, and injudicious, being subject in some degree to the same inconvenience with four sittings at nisi prius, in the city and county of Philadelphia. The time and services of the judges could have been distributed *singulatim* on jury trials. The augmentation of judges to this extent, prevented the dispatch of business; for one could dispatch a trial, at least in the same time with two; and hence there was less business done by half than might otherwise have been done. But taking the number of judges into view, it was impracticable, with any arrangement that could be made, to give satisfaction to the country, under the constitution of the circuit or *country nisi prius courts.* Of the greater number of causes depending, but few could be tried in the course of the time allotted for a county, and much time could not be allotted for twenty-six or thirty counties. But as all the auditors must have a chance of having their actions brought forward, all must be put down for trial; and *witnesses* summoned, and attending in the respective cases. This made it a matter of great expense to the parties, and it was a source of great pain to the judges to be under the necessity, though but little prospect of reaching a case, to detain suitors, and witnesses for the trial. For an action could not be continued over

until another sitting without the consent of both parties. And the court, consistent with their duties elsewhere, could not sit more than once in the year. In fact it was an absurdity in the constitution of the court to be bringing judges from a distance *to each county of the state* to try matters of fact, which could not be supposed to be in contemplation by the new constitution, under which, *districts* were established; and a president, a legal character, was appointed to preside. Nisi prius courts had been continued for some time after the framing and adoption of the new constitution; but this was an *inconsistency* with the provision which had been introduced; and which had rendered it unnecessary, when carried into effect. At a circuit court, it was found impossible to send away suitors satisfied, by having their causes tried, when, from the *multiplicity* of actions on the docket at a circuit court once a year, but a few could be tried; and the people not discerning always what prevented it, laid *the blame upon the judges.* It would require twelve judges, one of these holding a circuit or nisi prius court, every three months, to keep down, or discharge the business without delay through the state. The system is much preferable, of district judges, with writs of error to a court of the last resort. Presidents alternating with each other in adjoining districts, under some regulation, *might be an improvement.* But in that case it would be unreasonable not to allow *journey expenses* according to the extra riding. Something of this nature had been done in a particular case, but provision ought to be made by a general law, *to a certain extent,* in all cases.

Judge Brackenridge states that the leading cause was, however, to be found in the temper of the times, which he says was disposed to throw off all restraints of law altogether.

In 1803, Alexander Addison, president judge of the Fifth Judicial District, was impeached, charged with having prevented John B. C. Lucas, a justice of the peace, sitting at the Court of Quarter Sessions of Allegheny county, from addressing the grand jury on two occasions. On the first occasion, Lucas applied to the Supreme Court for leave to file an information against Addison for misconduct on the bench, because of Addison's refusal to permit him to address the grand jury on the first occasion. The court, however, declined to interfere, although of the opinion that associate judges had a right to express their opinions.

Addison, a Scotchman by birth and a member of the convention that framed the Constitution of 1790, was an aggressive Federalist, and strongly opposed to the Whiskey Insurrection, and was therefore unpopular with the inhabitants of his district. He was also addicted to delivering political addresses in the shape of charges to the grand jury. Otherwise he was a learned, upright and able judge. His principal enemy was Hugh Henry Brackenridge, recently appointed to the Supreme Court, an account of whom will be found elsewhere. It was at the instigation of Brackenridge that Lucas brought his charges against Addison. The trial of Addison's impeachment resulted in his conviction by the Senate, and he was sentenced to be removed from office and forever disqualified from holding the office of judge in the Commonwealth. In an address before the

Allegheny Bar Association, Judge Agnew characterized the trial as "the most flagitious ever urged on by vicious hate and obnoxious partisanship."

The next judge to be impeached was Thomas Cooper[1] who was born in London, England, October 22, 1759, and died in Columbia, South Carolina, May 11, 1840. He was educated at Oxford, and became proficient in chemistry and the natural sciences. He studied law, at the same time acquiring an extensive knowledge of medicine, and after being admitted to the bar he travelled a circuit for a few years, but took an active part in the politics of the time and was sent with James Watt, the inventor, by the Democratic clubs of England to those of France, where his sympathies were with the Girondists. This brought him in conflict with Edmund Burke, who severely censured his course in the House of Commons, to which Cooper replied with a violent pamphlet, the circulation of which was prohibited among the lower classes by the attorney general, although no exception was made to its appearance in expensive form. While in France, Cooper learned the process of obtaining chlorine from sea-salt, and this knowledge he tried to apply on his return to England by becoming a bleacher and calico-printer, but was unsuccessful. In 1795 he followed his friend, Dr. Joseph Priestly, to the United States, and settled in Northumberland, Pennsylvania, where he practiced law in the courts then presided over by Judge Rush. He, together with Alexander Dallas, was of counsel with William Duane when called before the United States Senate to answer the charge of libel. The Senate, however, having laid down a rule circumscribing the privilege of counsel, they both refused to take part in the proceedings, Cooper declaring he "would not appear in the Senate Chamber with their gag in his mouth." During the incumbency of John Adams as President of the United States, Cooper in a newspaper, which he edited at Sunbury, violently attacked the President. For this he was brought to trial in Philadelphia in April, 1800. He was convicted, fined, and sent to jail for six months. In 1806 he became president judge of the eighth circuit composed of the counties of Northumberland, Luzerne and Lycoming. He held his first court at Sunbury in April, 1806, and immediately began to introduce changes which he supposed necessary to maintain silence in and add dignity to the court, as the courts previously held there by Judge Rush had, through his easy and gentle nature, been too noisy and disorderly. The lawyers, suitors and spectators, however, did not take kindly to the innovation. This led to the filing of a petition on December 20, 1805, charging him as acting as prosecuting attorney after he became judge, and receiving fees therefor. The committee to which the petition was referred reported on January 11, 1806, acquitting him of any misdemeanors, he not having taken the oath of office for judge and having received no compensation for the same.

On February 21, 1811, however, another petition was presented charging him with official misconduct, and in March of that year he was

[1]This account of Thomas Cooper and his impeachment is taken from Hon. Rush Gillan's "History of the Judiciary of Franklin County."

brought before a special committee of the State Senate then sitting at Lancaster to answer ten charges contained in said petition. E. Greenough, Esq., of Sunbury, appeared as attorney of the complainants, and Thomas Duncan, Esq., of Carlisle, was counsel for Judge Cooper. The charges against him were as follows:

1. Fining and imprisoning Constable Hollister in 1807, at Wilkes-Barre, for whispering in court, the fine being $2 and imprisonment for one hour.

2. Fining and imprisoning John Hannah, an Irishman, of Northumberland, at his first court in Sunbury in 1850, for wearing his hat in open court.

Cooper admitted the truth of these complaints, but maintained that said fines and imprisonments were necessary to secure proper silence and decorum in the court house. He further said that a court house deserved as much respect as a church or school house did, and that if Hannah had claimed himself to be a Quaker, or to have any conscientious scruples about pulling off his hat in a court house, he would not have fined or imprisoned him, but that he had made no such claims and so deserved no extra favors.

3. Passing sentence of one year's imprisonment, at Wilkes-Barre, on one Gough, a young horse thief, who had confessed his guilt, and on the next day, on hearing of his being an old offender, calling him up before the court and passing a second sentence on him, increasing his imprisonment from one to three years.

Cooper admitted this to be true, but maintained that during the session of the court he had the right and power to alter sentences or judgments so as to correct his own mistakes and do what justice required, as, otherwise, lawyers and parties would at times be put to unnecessary expense and delay to have such errors corrected by means of a writ of error or the like.

4. Deciding important points in a case in which he had a pecuniary interest. Cooper denied this in a long statement of facts.

5. Setting aside the verdict of the jury in an intemperate and passionate manner in the case of Albright vs. Cowden. Cooper denied having done this in the manner alleged.

6. Browbeating counsel and witnesses. Cooper denied this charge also, and said that he had done nothing more in reprimanding counsel than was necessary for making statements that were unsupported by evidence, and for persisting in objection to matters after the court had decided them and allowed the right of filing exceptions to his opinions; which were necessary to make the counsel and witnesses preserve silence, order and decorum in the Court House.

7. Appearing armed with deadly weapons at the court House in Williamsport. Cooper said that he had done it but once, and then only because some man had threatened him with personal violence.

8. Refusing to hear parties speak in their own defense. Cooper

denied this in toto, and there was not the slightest evidence of any such refusal by him.

9. Allowing horse racing to go on at Sunbury after he had issued a proclamation against it. Cooper said that horse racing was allowed to prevent the various losses that would otherwise have befallen the tavern keepers, who had made much preparation for entertaining the horse racing visitors, and it was only allowed on the condition that there should be no gambling or rioting at said races, and no such horse racing in the county thereafter.

10. Fining and imprisoning Constable Conner for neglecting to execute a warrant put into his hands for the arrest of Jacob Langs, a counterfeiter, of (now) Union county, until Langs made his escape, said warrant being unconstitutional and contrary to the laws of Pennsylvania.

Cooper replied that when said warrant was issued he considered it constitutional and lawful, and also right to have it promptly executed. A large number of witnesses, both for and against him, were examined by the committee, and Judge Cooper spoke four and a half hours in his own defense. The committee entered upon the consideration of the whole matter and made the following report to the Senate:

Your committee for the premises are of the opinion that the official conduct of President Cooper has been arbitrary, unjust and precipitate, contrary to sound policy and dangerous to the pure administration of justice. They, therefore, submit the following resolution:

RESOLVED. That a committee be appointed to draft an address to the governor for the removal of Thomas Cooper, Esq., from the office of president judge of the courts in the Eighth Judicial District of Pennsylvania.

He was therefore removed by Governor Snyder, and Seth Chapman appointed in his place. There was great rejoicing at Northumberland over the action of the legislature and governor, and a cannon was fired in celebration of the event. Judge Cooper again returned to his practice at the bar, but was shortly afterwards appointed professor of chemistry at Dickinson College, which chair he held from 1811 until 1814. In 1816 he became professor of mineralogy and chemistry in the University of Pennsylvania, which he held until called to fill a similar chair in the College of South Carolina, at Columbia, in 1819, becoming president of the institution in 1820 and serving until 1834, at the same time filling the professorship of chemistry and political economy. Retiring from this post on account of age, he was employed by the Legislature of South Carolina in revising the statutes of the State.

Judge Cooper was eminent for his versatility and the extent of his knowledge. In philosophy he was a materialist, in religion a free-thinker, and in the nullification contest an ultra State-rights man. He was a vigorous pamphleteer in various political contests, and a frequent contributor to newspapers and magazines. From 1812 to 1814 he edited two of the five volumes of "The Emporium of Arts and Sciences" in Philadelphia,

and also Thomas Thomson's "System of Chemistry" (4 vols., Philadelphia, 1818). He published "Letters on the Slave Trade" (London, 1787); "Tracts Ethical, Theological, and Political" (1790); "Information Concerning America" (1790); "Account of the Trial of Thomas Cooper" (Philadelphia, 1800); "The Bankrupt Law of America Compared with that of England" (1801); "Introductory Lecture at Carlisle College" (1812); "An English Version of the Institutes of Justinian" (1812); "Tracts on Medical Jurisprudence" (1819); "Elements of Political Economy" (Charleston, 1826); "A Manual of Political Economy" (Washington, 1833). In the preface to the latter work, Judge Cooper said that he believed the manual would be found to contain the chief doctrines of the modern school of political economy, so far as they were applicable to the people of the United States. "Indeed," he wrote, "The example of Great Britain is not to be entirely neglected, for many circumstances of that country are on their road to take their places here also."

On February 28, 1803, Thomas Passmore, of the city of Philadelphia, presented a memorial to the House of Representatives complaining that he had been arbitrarily fined and imprisoned for a contempt of court by Edward Shippen, Chief Justice, and Associate Justices Yeates and Smith, "without the opportunity of defending himself before a jury of his peers, for a constructive and implied contempt not occurring in the view of the Court nor relating to any cause which could be considered as pending therein." He submitted "whether the proceedings against him do not involve a manifest infraction of the bill of rights and whether these summary judicial proceedings for constructive offences, if unnoticed by the legislature, may not pave the way for the destruction of the inestimable trial by jury . . . and whether the above named judges have not made themselves the objects of impeachment."[2]

The memorial was referred on different dates to two committees, the latter of which recommended that the succeeding House inquire into the conduct of the judges of the Supreme Court relative to their proceedings against Thomas Passmore. On March 13, 1804, the committee on grievances recommended that a committee be appointed to draft articles of impeachment against the judges. On March 22, 1804, articles of impeachment were prepared, which were tried at Lancaster on January 5, 1805. The facts involved as stated in the report of the committee on grievances were as follows:

That an amicable suit was entered into between Thomas Passmore, plaintiff, and Pettit and Bayard, defendants, on the 13th day of July, 1802, on a contested policy of insurance, both parties having chosen their man, as referees, with power in case of disagreement to choose an umpire, who, not agreeing, chose William Haslet, umpire, who, with one of the referees, on the fifth day of August, 1802, reported an award in favor of Thomas Passmore, plaintiff, of four hundred and ninety dollars, with interest, which award was returned into the office of the Prothonotary

[2] "Trial of Edward Shippen, Chief Justice, and Jasper Yeates, and Thomas Smith, Esqrs., Associate Justices, on an Impeachment, etc." Lancaster; no date.

of the Supreme Court, on the fifth day of August, 1802, on which judgment was entered on the fifth day of the same month, against Pettit and Bayard, defendants; and, that on the eighteenth of the same month, execution was issued, and a levy made by the sheriff on the goods of Andrew Bayard, on the same day, all which will appear by certified records, herewith reported.

That on the fourth day of September following, exceptions were filed by Andrew Bayard, against the decision of the referees; that on the eighth day of the same month, a paper was posted up in the coffee house, in Philadelphia, by the said Thomas Passmore, said to be a libel against Pettit and Bayard, in the words following: "The subscriber publicly declares, that Pettit and Bayard, of this city, merchants and quibling underwriters, has basely kept from the subscriber, for nine months, about five hundred dollars, and that Andrew Bayard, the partner of Andrew Pettit, did on the third or fourth instant, go before John Inskeep, Esq., alderman, and swore to that which was not true, by which the said Pettit and Bayard, is enabled to keep the subscriber out of his money for about three months longer, and the said Bayard, has meanly attempted to prevent others from paying the subscriber about two thousand five hundred dollars, but in this mean dirty action he was disappointed in, I therefore do publicly declare Andrew Bayard, a liar, a rascal, and a coward; and do offer two and a half per cent. to any good person or persons, to insure the solvency of Pettit and Bayard, for four months from this date."

THOMAS PASSMORE.

Philadelphia, Sept. 8th, 1802.

For which libel, the said Thomas Passmore was committed to the custody of the sheriff of Philadelphia County, in the debtors' apartment of the common gaol, for the space of thirty days, and was fined fifty dollars, to the Commonwealth, for an alleged contempt of Court. It appears, moreover, from the evidence, that the usual course of proceedings was, in the first instance, departed from by the Court. Immediate sentence, or atonement to Mr. Bayard, was the only alternative; but on the suggestion of Mr. Passmore's counsel, interrogatories in the usual manner, were filed by the counsel of Pettit and Bayard; which interrogatories, together with the answers thereto, (which answers in the opinion of your committee were satisfactory, and did purge the contempt, if a contempt had been committed) are herewith reported.

Although the said Thomas Passmore had complied with every request of the said Court, except that he refused to make an apology to Andrew Bayard; he was, on the twenty-eighth day of December, 1802, fined and imprisoned by the said Court, as aforesaid.

Judge Brackenridge, the fourth member of the Supreme Court, who was not embraced by the impeachment, manifested great magnanimity in requesting that he be permitted to share in the fate of his brethren. The House took him at his word, and sent an address to the Governor for his removal, and it was in this case that McKean said, as elsewhere stated, that the words "may remove" in the constitution sometimes meant "wont remove."

Caesar Rodney, of Delaware, was retained for the prosecution, it

having been found impossible to secure local counsel for that purpose. The judges were represented by Jared Ingersoll and Alexander J. Dallas. The trial lasted from the 8th to the 28th day of January, 1805. The defendants were acquitted, but the prosecution failed by only three votes of obtaining a two-thirds vote for conviction. The report of this trial covers four hundred and ninety-one closely printed pages, and these are followed by an appendix of ninety-six pages, containing authorities cited by counsel, including a long quotation from Shakespeare's "Henry V" and quotations from Hume's "History of England" and Montesquieu's "Spirit of the Laws." This trial led to the passage of the Act of April 3, 1809,[*] by which the power of judges to punish for constructive contempts was taken away. The substance of this act was incorporated in the twenty-third section of the Act of June 16, 1836, P. L. 793.

Another attempt to impeach the Supreme Court judges, this time for alleged official misconduct in refusing a new trial, was made in 1813, but on March 24th of that year the memoralists had leave to withdraw their charges. A similar petition was filed on February 12, 1814, and on March 21st a committee to which it was referred reported adversely upon it.

The following impeachments or attempts to impeach are taken from a statement kindly furnished the writer by the Legislative Reference Bureau:

In 1803 an address to remove Joseph Ryerson, an associate judge of Wayne county, charged with neglect of duties, was sent to the Governor by the Senate on March 29th, but no action was taken thereon. On March 10th of the same year a petition for the removal of Samuel Preston, also an associate judge of Wayne county, charged with official misconduct, was filed and a committee recommended his removal as well as that of Samuel C. Seeley, another associate judge of the same county. The matter was ordered to lie on the table, and no further action was had.

A resolution for the impeachment of Samuel Laird and John C. Creigh, associate judges of Cumberland county, was filed on December 21, 1802, but the committee to which it was referred reported that there was not sufficient cause.

An address for the removal of Benjamin Jacobs, an associate judge of Chester county, charged with the forgery of the name of James Moore, was sent to the governor by the Senate on March 21, 1803, but nothing was done in the matter.

On February 14, 1805, a petition for removal from office of Jacob Rush, president judge of the Third Judicial District, was presented, but the committee to which it was referred reported that there was nothing to warrant an impeachment.

Walter Franklin, Jacob Hibshman and Thomas Clark, of the Court of Common Pleas of Lancaster county, were impeached in 1818 for refusing to proceed as provided in an act to regulate arbitrations against certain attorneys of said court, upon the petition of John Wilson for the interposition of the court to compel them to pay over certain moneys in their hands claimed by him. They were tried and acquitted.

[*] 5 Sm. Laws, 55.

On December 21, 1826, a petition to inquire into the official conduct of Seth Chapman, of the Eighth Judicial District, was presented. The committee to which it was referred asked to be discharged. Another like petition was presented on March 4, 1830, and still another on February 22, 1833. The senate committee to which the last petition was referred recommended Chapman's removal, owing to age and bodily infirmities. Their opinion having been communicated to him, he resigned March 12, 1833.

Samuel D. Franks, president judge of the Twelfth Judicial District, was charged in a petition presented December 21, 1827, with demanding and accepting fees. Another petition was presented December 19, 1829. On January 12, 1830, the committee to which the petitions were referred was discharged, and the petitioners had leave to withdraw their petitions.

Robert Porter, of the Third Judicial District, was impeached in 1825 for misdemeanor in office, and on his trial in December of that year was acquitted. Petitions for his removal from office were subsequently presented in 1827 and 1830, upon which the committees to which they were referred reported adversely.

In 1829 a petition for the removal of George Ross, an associate judge of Armstrong county, was presented, but no action was had upon it. A petition to investigate the official conduct of John Young, president judge of the Tenth Judicial District, was presented January 14, 1830. The committee to which it was referred was discharged on March 30, 1831, and the attention of the next legislature was directed to the affair. A committee of that legislature to which it was referred was discharged on February 27, 1832.

Attempts to impeach the following named judges were made in the years named, but without any action thereupon: John Ross, associate justice of the Supreme Court, in 1832; T. H. Baird, of the Fourteenth Judicial District, in 1835; Joel Bishop and Joseph Otto, associate judges of McKean county, in 1836; Nathaniel Ewing, of the Fourteenth Judicial District, in 1846; William M. Irvine, of the Eighteenth Judicial District, in 1848. These judges were all charged with official misconduct.

CHAPTER XXXIII.

DISTRICT COURTS.

CHAPTER XXXIII.

District Courts.

By the Act of March 30, 1811, P. L. 138, a District Court for the City and County of Philadelphia was established, the jurisdiction of which will appear later, and district courts with similar jurisdictions were established from time to time in some of the other counties of this Commonwealth, as hereinafter mentioned.

On the final adjournment of the District Court for the City and County of Philadelphia on January 4, 1875, after its abolition by the Constitution of 1873, John T. Mitchell, an assistant judge of the court, afterwards Chief Justice of the Supreme Court, delivered an address from which the following is taken:

The judicial system of Pennsylvania has always been of remarkable simplicity. From time almost immemorial the entire litigation of each county has been practically in one court; for, though the Orphans' Court and the Quarter Sessions have been legally separate courts, yet during the greater part of the time, they have in fact been held by the judges of the Common Pleas, who have thus had the entire range of judicial business concentrated in themselves, though they maintained a purely formal and technical distinction between themselves as the one court or the other. This system, admirably as it has always worked throughout the various counties of the Commonwealth, where the pressure of business is not too great to allow ample time for deliberate consideration of each matter in its turn, and where the single president judge has necessarily a general oversight of all the business of his court, is nevertheless subject to serious difficulties and objections when applied to the vast and varied litigation of a great city. No single judge can cope with this business, nor can any single court if all its judges are to act together. But a court whose judges sit separately for various kinds of business, with rare occasions of a full session of all its members, is one court only in name; no uniformity of practice can be maintained, and no one of its judges, however great his executive capacities, can have a commanding acquaintance with the daily condition of the current business. Thus there are constantly unsatisfactory dispositions of business, and loose ends, and accumulations of unfinished matters, for which not the hard-worked judges but a faulty system is to blame.

On the other hand the multiplication of courts, leaving each with the same multiform and impracticable jurisdiction, does not remedy—fortunate if it does not aggravate—the evil. The tendency to diversity of practice and decision becomes almost irresistible, and the difficulties and perplexities of the bar in managing their business become not only a source of serious vexation to the bar and the bench, but positive drawbacks to the administration of justice.

The evils I have thus rapidly sketched had accumulated under the system of a single court in Philadelphia, until in the early part of the present century relief was imperatively demanded. The men of that day did what the evil demanded—they applied a remedy which experience and the nature of things pointed out as likely to be effectual. Observing that the evils arose not merely from the quantity of business, but from the great and vexatious variety in kind, they relieved the court of nearly all its labor of one kind—the trial of civil issues by jury—and transferred that to a new court.

By an Act, approved March 30, 1811, P. L., 138, it was enacted: "Whereas the Court of Common Pleas of the City and County of Philadelphia, from the various objects of its jurisdiction, and the great increase and accumulation of business, is incompetent to the speedy and effectual administration of justice to the citizens of that district; for remedy whereof, be it enacted," &c., that there shall be established a court of record by the name and style of the District Court for the City and County of Philadelphia, to consist of a President and two assistant judges; and two of whom, in case of the absence or inability of the other, shall have power to try, hear and determine all civil pleas and actions, and for the trial of such pleas and actions shall have the same powers and jurisdiction as are now vested by law in the Court of Common Pleas; provided that the said court shall have no jurisdiction, either originally or by appeal, except where the sum in controversy shall exceed one hundred dollars. By the subsequent sections of the same act, all cases in the Common Pleas, where the amount in controversy exceeded one hundred dollars, were ordered to be transferred to the new court on the first Monday of June, and the original jurisdiction of the Common Pleas, in cases where the amount in controversy exceeded that sum, was thenceforth to cease. With an evident intent to the rapid despatch of business, it was further provided that the new court should hold four terms in the year, with power to hold adjourned courts; "to make such regulations of practice as may most facilitate the progress of justice"; that the judges should sit daily for nine months in the year if necessary; that the determination of no cause or action should be delayed beyond the fourth term, including that to which it had been brought, if the parties be prepared for trial at the time appointed by the judges; and a notable illustration that then as now the interest of defendants, and the astuteness of counsel, were as largely responsible as the pressure of business for the delays of justice, it was provided that no suit should be removed from this court by certiorari or habeas corpus, but that in all cases the final judgment might be examined on a writ of error from the Supreme Court.

The prothonotary of the Common Pleas, for the time being, was directed to perform the duties, and entitled to the fees of prothonotary of the new court. The president of the court was to receive a yearly compensation of two thousand dollars, and the assistants five hundred dollars each. The court was to be opened for the purpose of issuing mesne process on the first Monday of May, which was to be a teste day for writs returnable to the first term.

Such is an outline of the District Court as at first created. Whether from motives of economy or a too sanguine hope of a speedy clearance of arrearages, perhaps from a failure even yet to see clearly that the over-

burdening of the Common Pleas was the inevitable result of the natural growth of the city, and the inherent defects of the system of crowding all kinds of business into a single court, it was apparently hoped that the necessity for relief was only temporary, and accordingly the new court was limited by this act to the terms of six years and no longer.

The court thus provided for met according to the Act, on May 6, 1811, and the entry on the minutes reads as follows: "May 6, 1811. A commission from the Governor, under the Great Seal of the State of Pennsylvania, appointing Joseph Hemphill, Esq., President Judge of the District Court for the City and County of Philadelphia, and a commission appointing Anthony Simmons, Esq., an assistant judge of the said court, were read. The court being organized, a commission appointing John Porter, Esq., Prothonotary of the said District Court, was read.

"Ordered by the court that the June term continue six weeks from the 3d of June next; the first four weeks for trials by general jury, the last two weeks for trial by special jury. Trials by general jury in periods of one week each."

This appears to have been all that was done on that day, and the next entry bears date June 3, 1811:

A commission appointing Jacob Somers, Esq., an assistant judge of the said court, was read. Joseph B. McKean, Esq., moved for his own admission as an attorney of this court, and is sworn and admitted thereof; after which the following gentlemen were admitted attorneys of said court, by order of court, to wit:

Here follow the names of seventy-two attorneys, including all the leaders of the bar of the day, and many whose names are to-day familiar to our ears, and perhaps to our personal recollections. Some of the best known in the order they are entered, are William Meredith, (father of the late William M.), Horace Binney, Peter A. Browne, James Gibson, Jonathan W. Condy, Charles W. Hare, Joseph R. Ingersoll, Joseph Hopkinson, Thomas Ross, James S. Smith, William S. Biddle, Philemon Dickerson, John Purdon, Peter S. Duponceau, Sampson Levy, Richard Rush, Charles J. Ingersoll, Benjamin Tilghman, Zalegman Phillips, (father of Hon. Henry M.), Richard Peters, Jr., Thomas Kittera, John Swift, Blathwait J. Shober, Thomas Allibone, Jr., Moses Levy, William Rawle, Jr., Charles Chauncey, Nicholas Biddle, George Vaux, John Sergeant, James Montgomery, Thomas Armstrong, Joseph Reed, Humphrey Atherton, and Elihu Chauncey. Each of the attorneys appears to have been separately sworn or affirmed, as the abbreviations "sw." or "affd." follow each name in detail.

On the following day, June 4, on motion of Moses Levy, Esq., John Hallowell was affirmed and admitted as an attorney, and on motion of Richard Rush, Esq., Josiah Randall was sworn and admitted. The court then addressed itself vigorously to business. . . .

From this time business flowed into the new court in a steady stream, and we find in the next year an Act of March 3, 1812, P. L. 69, reciting that "Whereas, it appears from the number of causes transferred into the District Court for the City and County of Philadelphia, and the accumulation of business therein, that the said court will have to sit nine months in every year; and whereas, it is just and reasonable that the judges who have to devote so great a part of their time to the duties imposed upon

them, as to prevent their attending to any other business, should receive a compensation proportionate to their services; and whereas, the salaries of the assistant judges of said court are inadequate to the duties to be performed by them, therefore, be it enacted, &c., that the said assistant judges shall each receive a salary of eight hundred dollars."

By an Act of March 9, 1814, the governor was authorized to appoint an additional judge, who, in the absence of the President, was to preside, and who was to receive the same salary. Under this act Thomas Sergeant was appointed as the additional judge, or, as he was popularly called, assistant or second president. . . . The court was renewed by the Acts of 1817 and 1821, and by the latter it was for the first time made imperative on the Governor to commission as judges three persons "of legal knowledge." . . . Finally, by the Act of April 3, 1851, P. L. 308, the limitation was removed in advance, and the court was continued with all its powers and jurisdiction until it should be abolished by law. In the history of the court few things are more noticeable than the apparent uncertainty of the tenure by which it held its existence for a few years at a time, and yet the unbroken regularity with which it was always renewed in advance of its expiration. . . . But the system must have been felt to be a bad one, and it is difficult to account for its continuance, unless we adopt the theory hinted to me by one whose experience and insight into practical affairs make even his unstudied suggestions weighty, that the Governors were reluctant to relinquish the patronage which the short terms of the judges constantly brought back to their hands. Party politics most of the time ran exceedingly high, and the unceremonious way in which successive governors dropped the judges appointed by their predecessors, unless they happened to be political friends of their own, gives much color to the suggestion. It is no small tribute to the honorable position traditionally held by the bench in this State, that notwithstanding the meagerness of the compensation and the uncertainties of the tenure, the bench of the District Court was filled for a long succession of years with lawyers, not only of integrity and learning, but of a degree of experience, ability, and reputation, that would naturally have suggested to them a desire for the greater pecuniary rewards of a sucecssful practice, or the honors of a more conspicuous public station.

From the foundation of the court in 1811 it has steadily grown in the estimation of the bar and thence of the community, and long before 1851 it had acquired a solid and enduring reputation as a great law court for the trial of civil issues. Many things combined in effecting this result; the first and principal one undoubtedly was that it was the first, and for many years the only, court of original jurisdiction in the Commonwealth whose judges were all learned in the law. Prior to 1821, as we have seen, there was no positive requirement of the statute that even the president should be learned in the law, but, as the list shows, the practice was to appoint lawyers, and, in fact, Simmons and Somers, the two associates appointed in 1811, were the only laymen that ever sat upon the bench of this court. Down to a very recent period, there was no positive requirement that the presidents of the Common Pleas should be learned in the law, though the practice had been almost uniform since the Revolution to appoint only lawyers. But the associates remained laymen in the Common Pleas of Philadelphia until 1833, when one of them

was required to be learned in the law, and "one to be appointed under the existing laws of the Commonwealth" (Act of February 8, 1833, P. L. 23); and the other associate remained a layman until 1836; after which all the judges of that court were required to be learned in the law. (Act of March 11, 1836, P. L. 76). So late as 1831 the salaries of the associate judges of the Common Pleas of Philadelphia were only four hundred dollars each, while the salaries of the judges of the District Court and the president of the Common Pleas were two thousand dollars each. . . .

By the amendment of 1850, to the Constitution of Pennsylvania, the judges of the several courts, required to be learned in the law, were to be elected for ten years. Under this amendment, in 1851, Judge Sharswood and Judge Stroud were elected to the offices of president and associate, which they had held before by appointment, and the third place was filled by a new judge, young in years, but already known to the profession as a learned and accurate lawyer, the present president of the court. Under this organization the court remained without change for sixteen years, until the transfer of Judge Sharswood to the bench of the Supreme Court in December, 1867. This is the District Court as the present generation of the bar have known it, and as it will be remembered hereafter.

The following relative to the District Court of Allegheny County was published in the issue of the "Pittsburg Legal Journal" of January 6, 1875, immediately after the final adjournment of that court:

The District Court of Allegheny County was established in 1833. It has always been in fact, a court of Common Pleas relieved of the appellate jurisdiction which brings into the other courts of Common Pleas appeals from the decisions of justices of the peace in civil cases. The Hon. Robert C. Grier was the first judge of this court, and he came here from the county of Montour. Tradition nearly as well authenticated in this case, we are told, as history itself, gives us the following circumstances as leading to the appointment of Judge Grier. There was at that time a vacancy in the Lycoming District, and the appointment to fill it was much desired by the late Chief Justice Ellis Lewis, then secretary of the Commonwealth under the administration of Governor Wolfe. R. C. Grier was strongly pressed by the bar of that district, and the inclinations of Governor Wolfe were supposed to be favorable to his appointment. Just at that time the bill creating the District Court of Allegheny county passed the legislature, and great difficulty was experienced in Allegheny county in coming to an agreement as to a suitable person for Judge of the new court. The names of Forward, Biddle, Craft and others were before the governor, but party feeling ran so high as to exclude the Whig names from consideration, and there was no very prominent Democratic name before the Governor. Under these circumstances, Ellis Lewis prevailed on Governor Wolf to tender the Allegheny appointment to R. C. Grier, not thinking that he would accept it, but as a sort of satisfaction of Grier's claims and those of his friends on Governor Wolfe. Grier did accept—it was the very place he wanted—and Lewis became president judge of the Lycoming District. When Judge Grier came to Pittsburg he met with a cold reception. The bar, which even then boasted its superiority to any other west of the Allegheny mountains, could not brook the selection of a stranger hardly known to it even by reputation (although Judge Grier was then the lead-

ing lawyer in Northeastern Pennsylvania) to preside in the principal court of the county. But Judge Grier's wonderful judicial abilities, which finally found their full scope in the Supreme Court of the United States and placed him in the rank of number one in that court, then filled with the most eminent lawyers in the nation, and his special aptitude for the despatch of business, soon overcame all prejudices against the so-called intruder, and he took a very high place in the respect and esteem of the bar of this county, which he maintained to the day of his death. Judge Grier sat in the court until 1846, when he was appointed by President Polk one of the justices of the Supreme Court of the United States. He served in that tribunal until February, 1870, when he retired, and died in the following year.

Six or seven years after the organization of the District Court, the business brought into the court had attained such magnitude that an assistant judge was needed. Judge Shaler, who had previously been president judge of the Common Pleas was appointed assistant judge, and sat in the court with Judge Grier until 1845, when he resigned. Judge Shaler spent his whole professional and judicial career in this county, and stood in the front rank, both at the bar and on the bench. The vacancy was filled by the appointment, by Governor Shunk, in 1845, of Hopewell Hepburn, Esq., of Northampton county. In 1846, when Judge Grier went up to the bench of the Supreme Court of the United States, Judge Hepburn was made president judge of the court, and the Hon. Walter Lowrie was appointed the assistant judge. Judge Hepburn made an honorable reputation for judicial ability and fairness. He quickly comprehended all the points and bearings of the case before him and was notably impartial in the submission of facts to the jury.

When in 1851 the Judiciary of Pennsylvania was made elective, the Hon. Walter Forward was chosen president judge of the court, and the Hon. Henry W. Williams, assistant judge. Mr. Forward died in November 1852, before he had been long enough on the bench to make an enduring judicial reputation, but it was not needed to round off or complete the fame of the great man. He had held the very first place at the bar for many years, had served in the State legislature, in Congress, and in the Constitutional Convention of 1838, with great ability and acceptance, had filled the office of First Comptroller of the United States Treasury, and as Secretary of the Treasury in a cabinet of which Daniel Webster was the chief. He subsequently accepted the mission to Denmark, and while absent from the country was elected as the spontaneous choice of the members of his party, helped on by the zeal of his friends. It may be said of Walter Forward, as was said of John Jay, not to make a literal quotation, when the spotless ermine fell on his shoulders it could touch nothing so spotless as himself. Hon. P. C. Shannon succeeded Judge Forward as president judge under an appointment made by Governor Bigler, to hold until the election of 1853. Hon. Moses Hampton succeeded Judge Shannon, having been elected in 1853, and re-elected in 1863, making twenty years of continuous service in this court. He was succeeded by Hon. Thomas Ewing, now president judge.

Judge Williams having been chosen a judge of the Supreme Court of Pennsylvania in 1867, resigned his seat after sixteen years service in the court and was succeeded by the Hon. John M. Kirkpatrick. In 1873,

an additional judgeship in this court was created by the legislature, and the Hon. J. W. F. White was elected to fill the new judgeship.

In speaking of the merits of the distinguished judges of this court, we have referred only to those who have passed away from among us. Antemortem eulogium is not often in good taste, and we refrain from indulging in it. We would not, however, be understood by our silence as detracting from the merits of the yet living judges and ex-judges of the District Court. One of these judges, the only one now among us who is not in a judicial station, we may be pardoned for referring to. The Hon. Moses Hampton came to this county from Somerset, about the year 1840, with a reputation for ability and eloquence which had preceded him. He immediately took a leading position at the bar of this county, and for thirteen years stood in the front rank. During this period, too, he served in Congress for four years, showing great ability and achieving distinction. He was a member of the House of Representatives when Abraham Lincoln sat in that body. In 1853 he was the unanimous choice of his party for the president judgeship of the District Court. His judicial record contains the evidence of great ability, patient investigation, industry, and is without a blot. He retired from the bench a year ago, full of honor, and enjoying the respect and esteem of the entire bar of this county.

The District Court for Lancaster County was established by the Act of March 27, 1820, P. L. 113, entitled "An Act to provide for the erection of an additional Court within the City and County of Lancaster." Section 1 provided "that there shall be a Court of Record established in and for the City and County of Lancaster by the name and style of 'The District Court for the City and County of Lancaster,' which shall consist of a president, who shall have power to try, hear and determine all civil pleas and actions, real, personal and mixed, . . . provided that the said court shall have no jurisdiction, either originally or on appeal, except when the sum in controversy shall exceed three hundred dollars." By authority contained in Section 2, suits of this character might, within a stipulated time, be transferred at the election of either party from the Court of Common Pleas to the new Court. The Act was to remain in force for four years. By the Act of March 10, 1823, P. L. 66, the county of Dauphin was added to the District Court, and the president judge was authorized to exercise such powers within the county of Dauphin as were granted to him in the city and county of Lancaster. The Act of 1820 was thereby continued in force for four years more from March 27, 1824, and the salary of the judge was fixed at $1,600. The Act of April 10, 1826, P. L. 277, continued the Act of 1820 and certain supplements (so far as they related to the District Court of the City and County of Lancaster) in force until the first day of May, 1833, and declared that the court should consist of two judges, namely, the president and assistant judge. The governor was directed to appoint and commission an assistant judge. The court was to have no jurisdiction, except as to cases then pending therein, either original or on appeal, unless the sum involved exceeded $100, and suits in the Common Pleas, where the sum in controversy exceeded $200, were, after May 1, 1826, to be transferred to the District Court, and the original jurisdiction of the Common Pleas, where the amount exceeded $200, was to cease. By the seventh section of the Act, the county of York was annexed

to the district, and thereafter the district was composed of the city and county of Lancaster, the county of Dauphin and the county of York. This situation continued until March 27, 1828, when the Act of March 10, 1823, expired of its own limitation. It was not renewed by subsequent legislation so far as Dauphin county was concerned; that county, after 1828, ceased to be part of the District.

By the Act of April 14, 1828, P. L. 446, the judges were required to reside within the bounds of their district, and under certain other supplements the jurisdiction of the court was enlarged, but not to an extent requiring special comment. By the Act of April 8, 1833, P. L. 215, the county of York was made a separate district, and the respective district courts were continued in force until May 1, 1840. Under the Act of March 11, 1840, P. L. 122, the District Court of the City and County of Lancaster was re-established and continued for ten years from May 1, 1840, and by the Act of March 29, 1849, P. L. 256, the court was abolished, and its record and business were transferred to the Court of Common Pleas.[1]

The District Court of Cambria County was created by the Act of April 13, 1869, P. L. 894. The jurisdiction of the court was confined to the boroughs of Johnstown, Conemaugh, Millville, Cambria, Prospect, Franklin and East Conemaugh, and the townships of Yoder, Richland, Taylor and Conemaugh. Within these boroughs and townships the court had the same jurisdiction as the Court of Quarter Sessions of Cambria County, and had original civil jurisdiction in all cases when the defendant was a resident in such district, and the plaintiff's demand did not exceed two hundred dollars. It also had jurisdiction of mechanic's liens, and embraced appeals and writs of certiorari from the judgments and proceedings of justices of the peace within the district. The president judge of the Twenty-fourth Judicial District was made the president judge of said court, and the associate judges of the courts of Cambria county the associate judges thereof. The sheriff and prothonotary of Cambria county were constituted the sheriff and prothonotary respectively of the new court.

By the Act of April 4, 1873, P. L. 521, the jurisdiction of this court was extended to all criminal cases with the exception of treason and homicide, and to general exclusive and unlimited civil jurisdiction within the district in all cases in law and equity. The said act provided for the appointment and afterwards for the election of a president judge, two associate judges and a clerk. This court was abolished by the provisions of the Constitution of 1873.

The District Court for the counties of Erie, Crawford and Venango was created by the Act of March 23, 1839, P. L. 130, and was given concurrent jurisdiction in all civil suits with the courts of common pleas of said counties, where the amount in controversy did not exceed one hundred dollars, and in all actions of ejectment or trespass where the title

[1]From "History of the District Court of the City and County of Lancaster," by Hon. Charles S. Landis.

to land might come in question, and have the same powers vested in the court of common pleas or the District Court of Philadelphia. The court had a separate president judge appointed by the Governor. By the fourteenth section of said act it was to continue for five years and no longer.

By the Act of April 21, 1841, P. L. 241, the provisions of the said Act of 1839 were extended to the county of Mercer, and it was provided that the president judge of said district court would hold two terms annually in the county of Mercer by the name and style of the "District Court of Mercer County." This court was abolished by the Acts of April 25, 1844, P. L. 384, and the Act of February 17, 1845, P. L. 42.

CHAPTER XXXIV.

VIRGINIA COURTS HELD WITHIN THE PRESENT TERRITORY OF PENNSYLVANIA.

CHAPTER XXXIV.

Virginia Courts Held Within the Present Territory of Pennsylvania.

The dispute between Lord Baltimore and William Penn over the southern boundary of Pennsylvania has been hereinbefore briefly referred to. It did not finally terminate until the establishment of Mason and Dixon's Line in 1768, when that line was run to a point two hundred and forty-four miles from the Delaware river. The Indians escorting the surveying party would not allow it to be run for the remaining thirty-six miles of the whole distance to be covered, which left the southern boundary of Pennsylvania uncertain for that distance. Reference has also been made to the claim of Connecticut to the northern portion of the State, which was not settled until the Decree of Trenton in 1782.

In addition to these boundary disputes there was a third, involving the western part of the territory of the State, Virginia claiming the territory now covered by the counties of Washington, Greene, Fayette, Westmoreland and Allegheny.

The claim of Virginia was based on an amendment to the charter of the South Virginia Company, popularly known as the London Company, made in 1609, which described the territory granted to the company as follows:

All those lands . . . lying and being in the part of America called Virginia, from the point of land called Cape or Point Comfort, all along the sea coast to the northward two hundred miles; and from the said Point or Cape Comfort all along the sea coast to the southward two hundred miles; and all that space and circuit of lands lying from the sea coast of the present aforesaid company into the land throughout from sea to sea *west* and *northwest*.

Virginia claimed that under this grant its territories were embraced within a line drawn due west from a point on the sea coast two hundred miles south of Point Comfort, and a line drawn northwest from a point on the seacoast two hundred miles northward of Point Comfort. The latter line would have run through the heart of Pennsylvania and passed out east of Erie City:

When La Salle explored the country from the Great Lakes to the mouth of the Mississippi in 1682, he laid claim in the name of France to all the territory west of the Allegheny Mountains, but the French title was terminated by the treaty between England and France made on

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[1] "The Boundary Controversy between Penna. and Virginia," by Boyd Crumrine, p. 511.

February 10, 1763, by which all the territory east of the Mississippi was ceded to England, and the claim of Virginia to the western part of Pennsylvania then began to be asserted.

The officials of the Province of Pennsylvania, seeing the extent to which her territory west of the Alleghenies was filling up with settlers chiefly from Virginia and Maryland, and anticipating the intention of Virginia to assert her jurisdiction over the valley of the Monongahela and Ohio, erected the county of Westmoreland out of the western part of Bedford county on February 26, 1773. The new county included all of what is now Allegheny county east of the Allegheny river and south of the Monongahela; all of Beaver county south of the Monongahela; all of Indiana county, and that part of Armstrong county east of the Allegheny, and all of Washington, Greene and Fayette. The first county seat of Westmoreland was at Hannastown, about three miles northeast of Greensburg. Afterwards it was removed to Greensburg.

In 1774 the House of Burgesses of Virginia created the district of West Augusta, as an appendage of old Augusta, a large county across the mountains from Pennsylvania in the Shenandoah valley, with its county seat at Staunton. The new district of West Augusta included all the settled country west of the mountains down to Middle Island Run, emptying into the Ohio above the Little Kanawha, and northward including the present Pennsylvania counties of Westmoreland, Alleghany, part of Beaver, and all of Washington, Fayette and Greene.

In October, 1776, by an act of the General Assembly of Virginia, the district of West Augusta was divided into three counties named respectively Ohio, Yohogania and Monongalia. The greater part of the counties of Ohio and Monongalia lay without the present limits of Pennsylvania, but the county of Yohogania was located entirely within those limits, and included what is now Westmoreland county, Allegheny county and parts of Washington and Fayette counties. Ohio county included Beaver county and poritons of Washington, Allegheny and Greene counties, while Monongalia county included portions of Greene and Fayette counties. The territories embraced in the three counties came together at the present site of Washington, Washington county.

The courts of Ohio county were held at what is now West Liberty, in West Virginia, those for Monongalia county on a farm near New Geneva, in what is now Fayette county, and those for Yohogania county as hereinafter stated. All these courts were regularly held until August 28, 1780, when an agreement was entered into for the running of a boundary line between the States, which was finally run and marked on August 23, 1785. Thereafter the counties of Ohio and Monongalia continued in existence as Virginia counties though reduced in territory, the greater part of each of said counties as originally constituted having been without the present limits of Pennsylvania. The territory within Pennsylvania covered by them, as well as the entire territory covered by the county of Yohogania, was restored to the undisputed jurisdiction of Pennsylvania.

From 1774 to 1780, therefore, conflicting jurisdictions existed in

western Pennsylvania. There was, first, the Pennsylvania court of Westmoreland county, sitting at Hannastown, about thirty-six miles from Pittsburgh, and, second, the Virginia court of West Augusta, sitting from 1774 to 1776 at Pittsburgh, and for a short period thereafter at Augusta Town, which court was superseded in 1776 by the Virginia court of Yohogania, sitting first at Augusta Town, and afterwards near what is now Jefferson township, Allegheny county, the Virginia court of Monongalia county, sitting at New Geneva, in Fayette county, and the Virginia Court of Ohio county, sitting at West Liberty in Virginia.

The Virginia courts seem to have done the greater amount of business, and, in fact, it appears that from April term, 1776, to April term, 1778, there were no sessions at all of the court of common pleas for Westmoreland county, while the Virginia courts were regularly held during that period. The settlers generally sided with Virginia because the price of land was less under the laws of that colony than under those of Pennsylvania.

The jurisdiction of the Virginia courts and that of the Pennsylvania court would doubtless have clashed more than they did but for the fact that the inhabitants of that section were drawn together to oppose a common foe by the breaking out of the Revolution.

When the judicial district of West Augusta was first formed in 1774, the court met in that district by adjournment from Augusta county, the county seat of which was then Staunton, Virginia, but at a court held on September 18, 1776, the court "on considering the ordinance of convention for holding a court in the district of West Augusta, without writ of adjournments from East Augusta, at such place as they should appoint, were of the opinion that they were a separate and distinct county and court from that of East Augusta," and appointed a clerk of the court to serve in place of the clerk of the court of East Augusta, who had theretofore acted as clerk of the district of West Augusta. The last session of this court was held on November 20, 1776, after which date West Augusta was divided into three counties, as before stated. The minutes of all these courts are in existence and have been published in the "Annals of the Carnegie Museum," and reprinted by Boyd Crumrine, Esq., of the Washington County Bar.

The first meeting of the court for the district of West Augusta was held at Pittsburgh on February 21, 1775, when it was organized by the reading of

> His Majesties Writ for adjorning the County Court of Augusta from the Town of Staunton to Fort Dunmore, and with a new Commission of the Peace and Dedimus and a Commission of Oyer and Terminer and Dedimus from under the hand of John, Earl of Dunmore, his Majesties Lieutenant and Governor in chief, bearing date the Sixth day of December One Thousand Seven Hundred and Seventy four,

directed to forty-two gentlemen named therein, constituting them justices of the peace and of the county court in chancery and justices of oyer and

terminer. These names included those of the justices of the parent county of Augusta, in Virginia, and a number of residents of the territory within Pennsylvania who were thought to be well affected to Virginia.

Among the latter were John Gibson, of Pittsburgh, brother of George Gibson, the father of John Bannister Gibson; Captain William Crawford, who had been a justice of Cumberland county and afterwards of Bedford county, a personal friend of Washington, afterwards burned at the stake by the Indians at Sandusky, Ohio, in 1782; Edward Ward, who had surrendered to the French and Indians the Virginia fort building at the Forks of the Ohio on April 17, 1754; Doctor John Connolly, the principal representative of Lord Dunmore, Governor of Virginia, in that section; and George Vallandigham, the grandfather of Clement L. Vallandigham, of Ohio, who figured prominently in border politics during the War of the Rebellion.

After the reading of the writ, several of the persons named therein took the appropriate oaths. George Brent and George Rootes were sworn as attorneys.

William Elliott, "bound over to the court for disturbing the minds of His Majesty's good people of this county, by demanding in an arbitrary and illegal manner of sundry persons what personal estate they were possessed of, that the same may be taxed according to the laws of Pennsylvania," was committed to the jail of the county, but upon giving bail in the sum of one hundred pounds of two sureties was released.

In the minutes of the second session of this court held on February 22, 1775, appear the following entries:

Robert Hannah, being bound over to this Court for openly disturbing the peace by interrupting the execution of Legal Process by the officers of this Government, and did actually imprison a Certain Philip Baily in the discharge of his duty as a Consta. ag'st the Peace of our Sovereign Lord the King, being called, appeared and offered a Plea to the Jurisdiction of the Court, which Plea was Overuled; and It is ordered that he be Committed to the Gaol of this County, and there to remain until he Enter into recog in the Sum of £1000 with 2 Secys. in the sum of £500 Each, to be levied of their respective Goods and Chattels, Lands and Tenements, in case Robt. Hanah is not of Good Behaviour for a Year and a day, and also desit from acting as a Majestrate within the Colony of Virginia by any authority from the Province of Pennsylvania, and that he keep the peace to all his Majesties Leige Subjects in the Mean time.

James Caveat, Gent, being bound over to this Court for sundry times Malevolently opposed the authority of his Majesties officers of the Government of Virginia, and has rioutsly opposed the legal Establishment of his Majesties Laws in this County, Contrary to the peace of our Sovereign Lord the King, being called, appeared and offered a plea to the Jurisdiction of the Court, which was overuled; and it is ordered that he be Committed to the Gaol of this County and thereto remain until he Enter into recog in the Sum of £1000 with two Secys in the Sum of £500 Each, to be levied of their respective Goods and Chattels, Lands and Tenements, in case James Caveat is not of Good Behaviour for a Year and a day, and

also desist from acting as a Majestrate within the Colony of Virginia by any authority derived from the Province of Pennsylvania, and that he keep the peace to all his Majesties Leige Subjects in the mean time. . . .

James Smith being bound over to this Court for acting as a Commissioner under an authority derived from under the Province of Pennsylvania within the Colony of Virginia, being called appeared, and on being heard It is Ord that he Committed to the Gaol of this County, and there to remain until he Enter into recog. in the Sum of £100 with two Secys. in the Sum of £50 Each, to be levied of their respec Goods and Chattels, Lands and Tenements, in case he is not of Good Behaviour for a Year and a day, and also desist from acting as a Commissioner from under any authority derived from under the province of Pennsylvania within this Colony.

It appears from Mr. Crumrine's sketch entitled "The Boundary Controversy between Pennsylvania and Virginia, 1748-85," that Justices Hannah and Caveat were confined at Pittsburgh for about three months, vainly endeavoring to obtain a release, but in the latter part of June, 1775, the sheriff of Westmoreland county went to Pittsburgh with a sufficient posse and liberated them, taking at the same time Doctor John Connolly, who had been active in asserting the Virginia jurisdiction, to Hannastown. He appears to have been arrested on a capias in a suit brought by Justice Hannah against him in the Westmoreland court, but this suit was never brought to trial.

At the same session Simon Girty, afterwards to become the infamous renegade who participated in the Wyoming Valley massacres, took the oaths of allegiance and abjuration, which were ordered to be certified on his commission as lieutenant of the militia of Pittsburgh and its dependencies.

The minutes of this and the other Virginia courts remind us very much of those of the courts of Upland and New Castle. The conditions existing upon the remote border were then as primitive as those which obtained along the Delaware a century before, and these courts performed nearly if not fully as many functions as were performed by the river courts. They registered marks for cattle and hogs, levied taxes, appointed viewers of roads, granted administrations, authorized persons to keep ordinaries and maintain ferries, authorized clergymen to perform their functions, and performed numerous other executive duties. The justices were, of course, unlearned in the law, but it appears from the minutes that the attorneys who practiced before them were skilled in their profession, the entries in the minutes indicating a regular procedure. They apparently had an examining board to examine applicants for admission to the bar, as such entries as the following frequently appear: "David Semple, Gent. is recommended to the Gentn. appointed to exam. Attos., that he is a Person of Probaty, honesty and good demeanor."

It is probable that the "gentlemen appointed to examine attorneys" were a committee of the old Augusta county bar, and that on the organization of the three new counties no such committee was appointed by the

courts thereof. At any rate, there are no such entries as the above in the minutes of the court of Yohogania county.

The following attorneys were admitted to practice by the court of West Augusta: George Brent, George Rootes, Henry Peyton and John Gabriel Jones. The names of David Semple, James Berwick and Andrew Ross were referred to the gentlemen appointed "to examine attorneys," but there is no record of their admission.

After the creation of the county of Yohogania, Samuel Irwin and Andrew Scott were admitted to practice before the court of that county, and presumably the attorneys practicing before the court of West Augusta continued to practice before the courts of the counties into which that district was divided.

We have seen in a previous chapter that the grand jury for Philadelphia county several times recommended the establishment of a ducking stool which, however, was never erected. The Virginians were less remiss in this regard, and at a meeting of the court of West Augusta on February 22, 1775, it was "Ord. that the Sheriff Imploy a Workman to build a Ducking Stool at the Confluence of the OHio with the Monongohale and that the person Imployed bring in his charge at the Laying of the Levy." Whether this stool was actually constructed or, if constructed, whether it was removed from Pittsburgh to Augusta Town when the court removed thither, does not appear.

Shortly after the organization of the court of Yohogania county it was "Ordered—That the Sheriff cause to be erected a pair of Stocks and a whipping post in the Court-House yard by next Court." And it afterwards appears that the workman was paid two thousand dollars for his services, but in the depreciated condition of the currency at that time the actual value of this payment was but eighty dollars..

On the abolition of the judicial district of West Augusta, the first session of the court of the county of Yohogania was held at Augusta Town on December 23, 1776:

> In consequence of an Act of the General Assembly of Virginia putting off all that part of the District of West Augusta Northward of the following bounds or lines (viz:) Beginning at the mouth of Cross Creek, running up the several courses thereof to the head; Thence South-Easterly to the nearest part of the dividing ridge Between the Ohio and the Monongahela Rivers, Thence along the said Dividing Ridge to the head of Ten Mile creek, Thence East to the road leading from Catfish camp to Redstone Old Fort, Thence with the said road to the Monongahela River, Thence across the said River to the said Fort, Thence along Dunlap's old road to Braddock's Road, and with said road to the meridian of Potowmac River,—and a Commission of the Peace and a Commission of Oyer and Terminer,

was addressed to thirty-one gentlemen, among whom were all the persons heretofore mentioned as members of the court of West Augusta, except Doctor John Connolly, who was then serving in the British army.

On the organization of this court, some difficulty was experienced

in finding any one willing to serve as sheriff of the new county, as appears from the following entries on the minutes:

Edward Ward, gentleman, came into court and prayed that the court would receive his reasons for refusing to act as Sheriff of this county, which was granted and were as follows:—That he cannot think of acting as Sheriff, or appointing any under Sheriffs, until the line Between the States of Virginia and Pennsylvania are fixed or limited, for on the North Eastern Bounds of this County There is still a Door open for dispute and Contintion, which has been heretofore the cause of Disturbing the Peace of the People Settled and claiming alternately The Jurisdiction of each Government, and before he can think of acting or any Person under him, he proposes praying the General Assembly to have a Temporary line fixed between them, or the limits of Pennsylvania run, or the Government of Virginia Peremptorily running the same, until which is done he cannot think of acting in any state or Government to Infringe on the reserved rights of his fellow subjects; he further assures that when Government has this done, he is ready to act with Cheerfulness, and if this Cannot be done he begs that the Court will Recommend some other gentleman to his Excellency to serve as sheriff,—and hopes the Court will acquiesce in Promoting the having the above bounds ascertained; and further offers to qualify into the Commission of the Peace. . . .

The Court is of the opinion that Joshua Wright Gentleman is a proper person to be recommended to his Excellency the Governor to serve as Sheriff, the whole of the above gentlemen named in the Commission of the Peace who are qualified refusing to act in said office on account of the great difficulty they apprehend will attend the execution of said office until such time as a line is fixed Between this Common Wealth and the state of Pennsylvania.

At the next session of the court on April 26, 1777, Joshua Wright's commission as sheriff not having arrived, that gentleman refused to act "Protempory." The question was then put to the rest of the court who would serve as sheriff, and all refused except William Harrison, who agreed to be appointed. Further difficulty in obtaining a person to act as sheriff developed afterwards, as appears from an entry in the minutes of the session of the court held on November 25, 1778, as follows:

A Commission from his Ex. the Gov. appointing Matthew Ritchie Sherifl of this County was read, Whereupon the said Matthew Ritchie Informed the Court that he had Taken every Method in his Power to Procure deputys to assist him in the Exn. of his Office, but from the present State of the fees, Together with the Contested Boundry of the County, and the small Emoluments Arising to the Sheriff of this County, although he has offered the whole to any Person who would act as Deputy, he has not been able to procure one, and Therefore refused to Act or Qualify into his Comm. Whereupon Geo. McCormick Gent. is recommend to his Excellency as a proper Person to Serve as Sheriff of this County. Ordered that the Clerk Transmit a Copy of this Recommendation to his Exc. as soon as Possible, with an Apolighy for the frequent application the Court are under the Disagreeable Necessity of Making for Sheriffs Commissions.

It appears to have been the practice in this court in all civil actions for the defendant to give surety for the payment of any judgment found against him, as will appear from the following excerpt from the minutes:

Walter Buscoe, Plaintiff
vs. In Case
Edward Todd, Defendant

This day came the plaintiff by his attorney, and Joseph Wells Personally appeared in Court and undertook for the said defendant that in Case he shall be Cast in this Suit that he shall pay and Satisfie the Condemnation of the Court or render his Body to Prison in Execution for the Same or that he the said Joseph Wells do it for him. Whereupon the Defendant prays and hath leave to Imparle until next Court and then to plead.

Such entries occur at the beginning of all civil actions.

The practice in cases of contempts of court by attorneys appears from the following entry, which, however, in the original, has lines drawn over it, probably to indicate that the action of the court was rescinded:

It appearing to the Court that Geo. Brent & John Gab'l Jones, practising Attos of this court, have this day insulted this court in a very gross manner, by directing the under sheriff not to appear & open the court when commanded by the Justices, met upon the adjournment of yesterday, from which directions the sheriff hesitated some time in doing his duty, & did commit other Insults highly derogatory from the dignity & Authority of this Court: It is the Opinion of this court that the sd George Brent & Jno. Gab'l Jones be suspended from practising as Attos in this Court untill the Pleasure of the General Court is known in this behalf. It is therefore Ordered that the Clerk do Certify these proceedings to the honble the General Court & that the Atto Genl be sumd, John Walker, Gent. of Albemarle, Edward Winston of Bedford, Geo. Rootes of Frederick, & Chas. Sims of West Augusta, to attend there to prove the facts alleged agst the sd Brent & Jones; & It is Ord that they be committed to the Gaol of this County, and there to remain until they Enter into recog in the sum of £200 Each, with 2 Secys Each in the sum of £100 Each.

Contempts by laymen were not so severely punished, as appears from the following:

Robert Hamilton, a prisoner in the Sheriffs Custody came into Court and in the grocest and most Impolite Manner Insulted the Court, and Richard Yeates, Gentleman in particular: Ordered, That the Sheriff, confine the feet of the said Robert Hamilton in the lower rails of the fence for the space of five minutes.

At a session of the court held on August 26, 1777, it was

Ordered: That the following Gentlemen be Appointed to make a Tour of the Different Districts hereafter mentioned, and Tender the Oath of Allegiance and Fidelity to this Common Wealth to all free Male inhabitants, agreable to an Act of Assembly Intitled an act to oblige all

the free Male Inhabitants above a Certain age to give assurance of Allegiance to this state and for other purposes Therin Mentioned.

Then follow the names of twelve persons with the districts to which they were respectively assigned for the above purpose, all, apparently, justices of the court.

At a session held on June 22, 1778:

Edward Hughy produced a license from the Presbytry of London Derry in the Kingdom of Ireland to Preach the Gospel of Jesus Christ which was Read. Whereupon the said Edward came into Court and Took the oath of Allegiance and Fidelity to this Common wealth.

The following grim item appears in an account of the sheriff ordered to be paid on November 25, 1778: "To Executing a Negro man belong'g to J. De Comp. £1. 7. 6."

That the dependent families of soldiers serving in the Revolution were provided for by the Commonwealth of Virginia appears from many entries like the following:

Ordered that Mary Douthard, the wife of Thomas Douthard, a poor Soldier from This State in the service of the United States, be allowed four pounds per month for the support of herself and Six children, to commence one Month prior to this date and that this Court draw on the Treasurer of this Commonwealth for the Same.

Profane swearing was punished by fines at the same rate as those established in Pennsylvania by the Great Law, that is, five shillings per oath, but in the depreciated condition of the currency swearing was an inexpensive luxury, and appears to have been indulged in accordingly, as we find a record of the fining of James Johnston for two profane oaths and two profane "cusses," three profane oaths and one profane curse, and four profane oaths, all on the same day, the fines aggregating three pounds.

The amount of business transacted by the court of Yohogania county is incomprehensible. At a court which met on March 25, 1779, there is a record of the following cases: Attachments, eighty-six; Common Orders, sixty-three; References, six hundred and seventy-eight; New Petitions, six; Alias Capias, thirty-four; Pluries Capias, six; Appearances, one hundred and forty-one.

The reason for this extraordinary number of suits in so sparsely a populated territory may perhaps be found in the following passage taken from McMaster's "History of the People of the United States:"

During the years of the war the administration of justice had been almost wholly suspended. After the war, debts had increased to a frightful extent. The combination of these two circumstances had multiplied civil actions to a number that seems scarcely credible. The lawyers were overwhelmed with cases. The courts could not try half that came before them.

This condition must have existed to a certain extent in 1779, as well as after the Revolution.

The last recorded session of this court was held on August 28, 1780. The courts of Ohio and Monongalia counties continued, of course, to be held after that date, but without the limits of Pennsylvania. The minutes of these courts above referred to may be found in the "Annals of the Carnegie Museum," Vol. 1, pp. 99, 505-568 (1902); Vol. II, pp. 71-140, 205-429 (1903).

CHAPTER XXXV.

FEDERAL JUDGES.

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Federal Judges.

James Wilson, the first Justice of the Supreme Court of the United States to preside in the United States Circuit Courts for the District of Pennsylvania, has been mentioned elsewhere. He was succeeded in the order named by James Iredell, William Patterson and Samuel Chase.

Judge Iredell was appointed in 1790, and occupied the bench until his death in 1799. Judge Patterson, of New Jersey, was an excellent lawyer, a man of great moral and mental worth, and of extraordinary judicial patience and propriety. He was appointed in 1793, and died in 1806.

Samuel Chase, of Maryland, one of the signers of the Declaration of Independence, a man of ripe legal learning, but of an arbitrary spirit, became an associate justice in 1796. From the beginning he was unpopular with the Philadelphia bar, owing to his despotic manner upon the bench.

In an important case before the court, says David Paul Brown in his "Forum," a learned gentleman by the name of Samuel Leake, from Trenton, was engaged. Mr. Leake was generally remarkable for the number of authorities to which he referred, and upon this occasion he had brought a considerable portion of his library into court, and was arranging the books upon the table at the time the judge took his seat, when the following colloquy took place:

Judge Chase—"What have you got there, sir?"
Leake—"My books, sir."
Judge Chase—"What for?"
Leake—"To cite my authorities."
Judge Chase—"To whom?"
Leake—"To your honor."
Judge Chase—"I'll be d—d if you do."

Not long afterwards the indictment of Fries for treason was tried, elsewhere referred to, in which Judge Chase submitted at the opening of the trial a statement of the law as he intended to lay it down in his charge to the jury, which occasioned the withdrawal of Messrs. Lewis and Dallas from the defense. This led to the impeachment of Chase in 1805 before the Senate of the United States. The judge was acquitted and Fries pardoned.

McMaster in his "History of the People of the United States"[1] gives an interesting account of the impeachment trial of Judge Chase. The immediate cause of his impeachment will appear from the following:

[1] Vol. 3, p. 168, *et seq.*

Just after the close of the February term of the Supreme Court, Chase had gone upon his circuit, and May second addressed the Grand Jury at Baltimore. The charge was much in his old-time style. It began with matters appertaining to the jury and ended with matters appertaining to politics. He could not, he said, suffer the jury to go to their chamber without a few words on the welfare and prosperity of the country. Not constitutions, but well-secured rights, made a people free and happy. All history taught that a monarchy might be free, that a republic might be enslaved. Where laws were made without respect to classes, where justice was meted out alike to rich and poor, where wealth gave no protection to violence, and where the property and person of every man was quite secure, there the people were indeed free. Such was the present condition of the United States. Where laws were partial, arbitrary, and uncertain; where there was one kind of justice for the rich man, and another kind of justice for the poor man, where property was no longer safe, and where the person was open to insult, without redress by law, there the people were not free, whatever form of government they possessed. To this situation he greatly feared the United States were going. The repeal of the Federal Judiciary Act, the sweeping away of sixteen circuit judges, the changes in the State Constitution of Maryland, the establishment of universal suffrage, the proposal to reform the State judiciary, were signs not to be mistaken. They would, in his opinion, surely and quickly destroy all protection to property, all security to personal liberty, and sink the country into a mobocracy, the worst kind of government known to man.

The impeachment was moved in the House by John Randolph, of Roanoke:

He, too, thought the language of the Baltimore charge was no ground for impeachment, and went back to the conduct of Chase in the trial of John Fries. He reminded the House that, at the last session of Congress, a member from Pennsylvania had, in his place, stated facts regarding the official conduct of Judge Chase which he thought the House was bound to notice. The member referred to was John Smilie. The statement of facts referred to was made in the course of a debate on the Judiciary Bill. Observing that Judge Chase had been assigned to the circuit in which Pennsylvania lay, he protested and begged to have the judge put on some other circuit, alleging that Chase was obnoxious to the people of that commonwealth. He was asked why Chase was obnoxious to the people of Pennsylvania, and told the story of the trial of Fries; how the counsel for the defendant were insulted, and browbeaten, and driven from the Court; how the prisoner was tried without counsel, convicted, and sentenced to be hung, and how, when Adams heard of the conduct of the judge, he pardoned Fries. When this statement was made, the session, Randolph said, was too far gone to take up the charges. But he had since looked into them; he believed them to be true, and, so believing, moved for a committee of investigation.

The House voted to impeach Chase on March 12, 1804, but the articles of impeachment were not presented to the Senate until December 7th of that year:

The ceremony gone through with on that day was thought most imposing. Precisely at one, the managers presented themselves at the door of the Senate chamber, were admitted, and sat down within the bar. The sergeant at arms then proclaimed silence. John Randolph then rose and read the articles through. Burr, in behalf of the Senate, declared that due order would be taken, and the managers, having delivered the paper at the table, withdrew.

A month now passed before the trial began, for notice had to be served on the judge, rules drawn up for the guidance of the Court, and, what greatly pleased the Federal newsmongers, the Senate chamber had to be draped in feeble imitation of that splendid hall in which Warren Hastings had been tried and acquitted. Can these Democrats who are fitting up the court of impeachment with red hangings and green hangings, with crimson boxes for the triers, and with blue boxes for the managers, all in the latest English style, can these, it was asked, be the men who, a few years since, found fault with our judges for wearing gowns, with our President for his receptions, his levees, his speeches to Congress from the throne, nay, with Congress for marching through the street with an answer to the speech, and for sitting on chairs made of mahogany from the British colonies? Nor were such scoffs undeserved. In a city in a desert; in a city without houses, without people; in a building not yet half erected, men, avowedly the simplest of republicans, were imitating the finest piece of ceremonial witnessed in England in the course of the eighteenth century.

On the right and on the left of the chair of the Vice-President were two rows of benches covered with crimson cloth. On these the senators were to sit in judgment. Before them was a temporary semicircular gallery, raised on pillars and covered, front and seats, with green cloth. To this the women came in crowds. Under the gallery were three rows of benches rising one above the other, likewise covered with green cloth, and set apart for the heads of departments, foreign ministers, and the members of the House of Representatives. In front of this amphitheatre, and facing the rigth and left of the Vice-President, were two boxes covered with blue cloth. One was occupied by the managers, the other by the accused and his counsel.

Neither of these boxes was occupied on the opening day. The proceedings were merely formal. The Senate attended. The Secretary read the return of the summons. The name of Samuel Chase was called. So closely had English precedent been followed that no seat had been provided for the culprit, but notice had been given that, if he requested it, a chair would be brought to him. The judge was told the Senate was ready to hear his answer. His answer was short and temperate. He denied that he had committed any crime or misdemeanor whatever; denied, with a few exceptions, every act with which he was charged; spoke of the importance of the impeachment not only to himself, but to the cause of free government, and asked till the next session of Congress to put in his answer and secure counsel for trial. He was given till the fourth of February. . . .

On that day, for the first time, the managers and the counsel for the accused appeared in their boxes. The month allotted the defendant to secure counsel and make ready for trial had been well spent, and he now confronted his accusers with an array of legal talent such as had never yet

assembled in the city of Washington. Beside him stood Luther Martin, a man without an equal at the Maryland bar; Robert Goodloe Harper, Charles Lee, Philip Barton Key, and Joseph Hopkinson, a young man just turned thirty-five, who having defended Fries before Judge Chase, was now to defend Judge Chase against the charge of oppressing and unjustly treating Fries. As counsel for the House were the managers, John Randolph, George Washington Campbell, Joseph Nicholson, Caesar Augustus Rodney, John Boyle, Peter Early, and Christopher Clark. The first day was taken up with reading the plea of Judge Chase and calling the roll of the witnesses. An adjournment, the opening speech of John Randolph for the managers, and the examination of witnesses, consumed two weeks more, so that the middle of February came before the arguments began in good earnest. Eight articles had been exhibited. Two set forth his arbitrary, oppressive, and unjust treatment of Fries. Two more charged him with having oppressed James Thompson Callender by forcing a prejudiced juror to serve, by ruling out evidence, by acting so partially, so intemperately, so cruelly, that the counsel for Callender had been compelled to abandon their client and their case. Two others accused him of violating the laws of Virginia by issuing a capias against the body of Callender instead of a summons, and by trying the prisoner at the same term at which he was indicted, though the law declared that he should not be tried till the term next following. The seventh alleged that he had refused to dismiss a Grand Jury at New Castle, Delaware, till it convicted a printer on trial for sedition. The eighth was concerned with his conduct at Baltimore in May, 1803; charged him with seeking to stir up the anger of the jury against the government of Maryland and the Government of the United States, and with "prostituting the high judicial character with which he was invested to the low purposes of an electioneering partisan."

Chase was acquitted on all the articles, the largest number of votes pronouncing him guilty having been nineteen on the eighth article. He was unanimously acquitted on the fifth. Judge Chase was born in 1741 and died on June 19th, 1811. He was succeeded by Bushrod Washington, who was said to have been perhaps the greatest nisi prius judge that the world ever knew, without even excepting Chief Justice Holt or Lord Mansfield. He was born in 1761, a nephew of President Washington. He was never elevated to office by his uncle, but was appointed by his successor, John Adams, an associate judge of the Supreme Court of the United States in 1798, at the early age of thirty-seven years. Upon his appointment he entered at once upon his duties which he performed with distinguished ability to the close of his life, which occurred in Philadelphia on November 26, 1829.

He was a man of middle height, with a finely chiseled feminine face and of a slender and feeble frame, though not deficient in activity. He was remarkable for the dignity with which he presided over his court. In a discourse delivered a short time after his death Judge Joseph Hopkinson spoke of him as follows:

Few, very few men, who have been distinguished on the judgment seat of the law, have possessed higher qualifications natural and acquired,

for the station, than Judge Washington. And this is equally true, whether we look to the illustrious individuals who have graced the Courts of the United States, or extend the view to the country from which so much of our judicial knowledge has been derived. He was wise, as well as learned; sagacious and searching in the pursuit and discovery of truth, and faithful to it beyond the touch of corruption, or the diffidence of fear. He was cautions, considerate, and slow in forming a judgment, and steady, but not obstinate, in his adherence to it. No man was more willing to listen to an argument against his opinion; to receive it with candor, or to yield to it with more manliness, if it convinced him of an error. He was too honest and too proud to surrender himself to the undue influence of any man, the menaces of any power, or the seductions of any interest; but he was as tractable as humility, to the force of truth; as obedient as filial duty, to the voice of reason. When he gave up an opinion, he did it not grudgingly, or with reluctant qualifications and saving explanations; it was abandoned at once, and he rejoiced more than any one, at his escape from it. It is only a mind conscious of its strength, and governed by the highest principles of integrity, that can make such sacrifices, not only without any feeling of humiliation, but with unaffected satisfaction.

Justice Washington was a man of the most unflinching courage, as will appear from the following account of the trial of the United States v. Michael Bright, taken from David Paul Brown's "Forum" which is given not only because of the light which is throws upon Washington's character, but because of the great importance of the case:

During the war of our revolution, Gideon Olmstead and others, having fallen into the hands of the enemy, were put on board of a British sloop, as prisoners of war, to be conducted to New York. During the passage, Olmstead and his companions rose on the British crew, took the vessel, and steered for a port in the United States. When within five miles of the port, a brig belonging to the State of Pennsylvania, came up with them and captured the sloop as a prize. She was brought to Philadelphia, and there libelled in the Court of Admiralty of the State. Olmstead and his associates filed their claim, and a judgment was rendered, giving one-fourth of the prize to them, and the remainder to the brig, that is, to the State of Pennsylvania, her owner. Olmstead appealed to the Court of Appeals, established by Congress, where the sentence of the Court of Admiralty was reversed, and the whole prize decreed to Olmstead; and process was issued, directing the marshal to sell the vessel and cargo, and pay the proceeds accordingly.

The Judge of the Court of Admiralty delivered to David Rittenhouse, then Treasurer of the State, the sum to which the State was entitled by the judgment of that Court, but which by the decree of reversal belonged to Olmstead. This money, in the form of certificates, was in the possession of Mr. Rittenhouse at the time of his death, and then came into the hands of his daughters, as his representatives. The property was in this situation when Olmstead filed his libel in the District Court of the United States, then established under the new constitution, praying for the execution of the decree of the Court of Appeals. A decree was given by the District Court, according to the prayer of the libel. This was in January, 1803. Thus far the State of Pennsylvania had made no movement to assert her

claim; but it was now necessary for her either to surrender her pretensions to this money, or to come forward and defend her citizens, who were holding it only for her use, and in doing so were exposed to the whole power of the Federal judiciary. Accordingly, on the second of April, 1803, an act was passed by the legislature of Pennsylvania, requiring the representatives of Mr. Rittenhouse to pay the money into the State Treasury, and directing a suit against them should they refuse. The governor of the State was also required to protect the just rights of the State, by any further measures he might deem necessary; and also to protect the persons and property of the ladies from any process which might issue out of the federal court, in consequence of their obedience to this requisition. The act of assembly declared the exercise of jurisdiction by the Court of Appeals was illegally usurped, in contradiction to the just rights of Pennsylvania; and that the decree of reversal was null and void; so of the decree of the District Court. Pause for a moment to observe the awful positions in which these two sovereignties—that of the United States and that of Pennsylvania—are now placed. The United States were bound to support, with their whole force, the execution of the judgment of their court; and the governor of Pennsylvania was ordered by its legislature to resist the execution of that judgment with the whole force of the State. We tremble even now to look back at the precipice on which we stood. A false step on either side might have been ruin to both. Nothing but the most calm and consummate prudence, the most disinterested and magnanimous patriotism, could have brought us safely through this moral crisis.

The District Court of the United States hesitated to proceed. The question was one of great delicacy; the anticipated conflict terrible in the extreme. The process was suspended, that the case might be submitted to the Supreme Court; which, after a hearing, stood firmly to the constitution and the law, and commanded the District Judge to issue the process required. It was issued. With what an agonizing anxiety the result was awaited. Was a civil war to tear the entrails of the State? and citizen to meet citizen in a deadly strife? Was our happy and prosperous career doomed to be so short? Was this glorious Union to dissolve in blood, after a few years, which had proved its unparalleled excellence; had poured, plenteously, bounties upon our land; had raised us from weakness, poverty and obscurity, to the power and dignity of a great nation: which had given liberty, security, and wealth to a virtuous and industrious people? was all to be shattered and lost in an unnatural conflict? The process was issued; and the officer of the court had no choice but to execute it; and to compel obedience to it by the means given to him by the law. General Michael Bright, commanding a brigade of the militia of Pennsylvania, received orders from the Governor immediately to have in readiness such a portion of the militia under his command as might be necessary to execute the orders, and to employ them to protect and defend the persons and property of the representatives of Mr. Rittenhouse from and against any process founded on the decree of the District Court of the United States. A guard was accordingly placed by General Bright at the houses of these ladies; and he, with the other defendants in the indictment, opposed, with force, the efforts of the marshal to serve the writ issued to him. The process, however, was served; and the State relieved the ladies, not by waging war upon the United States, but by paying the

money according to the judgment of the court. This is enough of the history of this interesting case for our present object. It was for this resistance to the process of a Court of the United States, that General Bright, and others of his party, were indicted, and brought to trial before Judges Washington and Peters, holding a Circuit Court of the United States.

The trial of this cause lasted several weeks, during all which time there was the greatest popular excitement. The State-rights men affected to hold the federal authority in derision, and publicly proclaimed that Justice Washington would never dare to charge against the defendants or pronounce sentence against them if they were convicted. Upon the ending of the speeches of counsel, however, at the close of a day, he turned to the crier and said:

Adjourn the Court, to meet to-morrow morning, in the room on the ground floor of this building. This is an important case—the citizens manifest a deep interest in its result, and it is but right that they should be allowed, without too much inconvenience, to witness the administration of the justice of the country; to which, all men, great and small, are alike bound to submit.

On the next day he charged against the defendants, they were convicted, and he sentenced them.

Francis Hopkinson, the first district judge for the District of Pennsylvania, was born at Philadelphia in 1737, graduated from the College and Academy of Philadelphia, studied law with Benjamin Chew, and was admitted to practice in 1761. His father, Thomas Hopkinson, was a leading member of the Philadelphia bar, and served as judge of the Vice Admiralty from 1741 to 1749.

In 1772 he was appointed collector of customs at New Castle. Having married Ann, daughter of Joseph Borden, of Bordentown, New Jersey, he attended to the business of his office by deputy, and resided for a time at Bordentown, during which time he was a member of the Provincial Council of New Jersey. In 1776 he was chosen one of the delegates to the Continental Congress, and afterwards served as the head of the Navy Department of the newly formed government, and was treasurer of the Continental Loan Office. In 1779 he was appointed judge of the Admiralty Court of the Commonwealth of Pennsylvania, and served until 1789, when he was commissioned judge of the District Court of the United States for the District Court of Pennsylvania, which office he held until his death in 1791.

Judge Hopkinson was possessed of great powers of ridicule, and his poem entitled "The Battle of the Kegs," written on the occasion of the panic occasioned among the British ships in the Delaware in 1778 by the sending of floating torpedoes down the river, is still read with amusement. Francis Hopkinson was succeeded by William Lewis, a biographical sketch of whom is elsewhere given.

Mr. Lewis served less than a year, and was succeeded on April 11, 1792, by Richard Peters, who was born at Blockley in 1744. He was

educated at the Academy of Philadelphia, studied law and was admitted to the Philadelphia bar in 1763. He served as a captain in the army during the Revolution, was Secretary of the Board of War, and in 1779 was appointed one of the commissioners of war. He sat as a district judge from 1792 to 1828, a period of thirty-seven years. He is said to have been an elegant classical scholar, and was especially versed in land titles and maritime law. At a meeting of the Philadelphia bar held on the occasion of his death, Charles J. Ingersoll delivered an address from which the following is taken:

To have been thirty-seven years a judge without ever failing to be punctual, patient, and painstaking, is more than but few can boast of. But Judge Peters, moreover, was a man whose purity was never doubted, and whose judicial faithfulness altogether was of a high desert. With the land laws, so important in this State, he was remarkably conversant. In the sea-laws, so important to the United Staes, he was almost the founder or reviewer of a code which has not only been sanctioned throughout America, but received the remarkable acknowledgment of its unconscious adoption, about the same time, by the most profound judge of the greatest marine empire,—Lord Stowell, in Great Britain.

It is distinct merit in this system of Judge Peters, of the utmost advantage to navigation, besides being in itself a most honorable characteristic, that he uniformly vindicated and protected that humble, helpless, but useful class of mankind, the common sailors, from the oppression and extortion of their superiors, whether master, merchant, or proctor. Judge Peters was a man of considerable quickness of perception and of great sagacity. His judgments have been mostly supported, even when he differed occasionally with the eminent person who for thirty years has presided on this circuit, and displayed all the qualities of a great judge, —Judge Washington. Let me add, that in thirty years these gentlemen never differed but in conscientious judgment, the most cordial harmony marking and strengthening their administration. The constant cheerfulness which never forsook Judge Washington to the last, we all remember.

Judge Peters had a whimsical sense of humor, which frequently manifested itself on the bench, as on one occasion when looking through the court house window at a Conestoga wagon being drawn by, he remarked, as though speaking to himself, "That wagon must have come a long distance, because its wheels are so thoroughly tired."

Richard Peters, Jr., the son of Judge Peters, admitted to the bar in 1800, and United States Attorney from 1813 to 1815, was the reporter of many decisions of the Federal Courts comprised in some thirty volumes. He died on May 2, 1848.

Joseph Hopkinson, the son of Francis Hopkinson, was born November 12, 1770, and graduated at the University of Pennsylvania in 1786. He studied law with William Rawle and James Wilson, and began to practice at Easton in 1791, but soon returned to Philadelphia. He was counsel for Doctor Rush in his suit against William Cobbett for libel, and obtained a verdict of five thousand dollars in favor of his client. He

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John Sadowlader

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defended Judge William Chase in his impeachment proceedings before the United States Senate. He served as a member of Congress from 1816 until 1820, when he removed to Bordentown, New Jersey, where he resided until 1822. He then returned to Philadelphia, where he resumed practice, and was appointed Judge of the United States District Court in 1828, which office he held until his death in 1842. He was a prominent member of the convention which revised the constitution in 1837. He was for many years president of the Philadelphia Academy of Fine Arts. He was best known for a long time as the author of "Hail, Columbia!", which he wrote in 1798.

On the death of Judge Hopkinson, Thomas Bradford, Jr. was appointed his successor, but was not confirmed by the Senate. Horace Binney was then appointed, but declined the appointment on January 31, 1842. Archibald Randall was then appointed and confirmed. He resigned as an associate judge of the courts of the First Judicial District to accept this office, in connection with which courts he is elsewhere mentioned. He served until his death on May 30, 1846.

Judge Randall was succeeded by John K. Kane, who was born on May 16, 1795, in the State of New York. He removed to Philadelphia with his parents in 1801. He entered Yale College in 1810, studied law with Judge Hopkinson and was admitted to the Philadelphia bar on April 17, 1817. He was elected to the General Assembly in 1824. He served as city solicitor of Philadelphia from 1828 to 1830, and again in 1832. He was appointed a commissioner under the Convention of Indemnity with France in the same year. He was an ardent Jacksonian and active in the United States Bank matter. He was appointed attorney general on January 21, 1845, and served until his appointment as judge of the United States District Court on June 16, 1846. He served on the bench of the District Court until his death on February 21, 1858.

Judge Kane was succeeded by John Cadwallader, a son of General Thomas Cadawallader, who was born at Philadelphia on April 1, 1805. He graduated from the University of Pennsylvania in 1821, read law in the office of Horace Binney and was admitted to the Philadelphia bar on September 29, 1825. He served as vice-provost of the Law Academy of Philadelphia from 1833 to 1853, and was captain of a militia company during the riots of 1844. He was elected to Congress in 1855 and served one term. On the death of Judge Kane he was appointed his successor and served until his death on January 26, 1879.

Judge Cadwallader was succeeded by William Butler, who is elsewhere mentioned as president judge of the Fifteenth Judicial District. He served as district judge from 1879 until 1899, when he resigned.

Judge Butler was succeeded by John B. McPherson, who is elsewhere mentioned as an additional law judge of the Twelfth Judicial District, and served until his appointment as a judge of the United States Circuit Court of Appeals of the Third Circuit.

James B. Holland was born in Montgomery county on November 14, 1857. He was educated in the public schools, and admitted to the bar in

December, 1877. He was elected district attorney for Montgomery county in 1892, and appointed naval officer of the Port of Philadelphia on March 18, 1898. On July 12, 1900, he was appointed United States District Attorney for the Eastern District of Pennsylvania, and was appointed Judge of the same district on April 19, 1904, a second judge thereof having then been provided for. He died on April 24, 1914.

Judge McPherson was succeeded by J. Whitaker Thompson of Montgomery county, and Judge Holland by Oliver B. Dickinson of Delaware county.

A United States District Court for the Middle District of Pennsylvania was established by Act of Congress in 1901, and Robert W. Archibald, who is elsewhere mentioned as president judge of the Forty-fifth Judicial District, was appointed judge of said court and served until impeached and removed from office in 1911. He was succeeded by Charles B. Witmer, the present incumbent.

Hon. Charles B. Witmer was born in 1862 in Lower Mahanoy township, Northumberland county, attended public school surrounding birthplace, and later taught in the public schools of Lower Mahanoy township. Entering Central Pennsylvania College, New Berlin, Pennsylvania, he graduated with the class of '83, and in the following year was principal of the Georgetown High School. Registered to read law with Hon. C. G. Voris, Sunbury, Pennsylvania; admitted to the Northumberland county bar in 1887; was admitted to practice in the Supreme Court of the State, and in 1888 was appointed to the position of county solicitor, which office he held to 1891, holding the same also from 1894 till 1900. Was Republican nominee for judge of Northumberland County Courts in 1901 and defeated by 67 votes. Appointed assistant attorney for Spanish Treaty Claims Commissions in 1902, which office he held until 1904, when he was chosen chief counsel for the Dairy and Food Commission, Harrisburg, and in 1905 was special counsel for the Auditor General's Department, which office he held until June 8, 1906, when he received the appointment as United States Marshal for the Middle District of Pennsylvania. On December 10, 1907, he was appointed United States District Attorney for the Middle District of Pennsylvania, which office he held until March 2, 1911, when he received his appointment as United States District Judge for the same district.

Judges of the District Court for the Western District of Pennsylvania.

The Western District was established in 1818, and the first district judge was Jonathan Hoge Walker, who is elsewhere mentioned herein as president judge of the Fourth Judicial District. He was appointed and confirmed April 20, 1818, and served until his death in 1824.

Judge Walker was succeeded by William Wilkins, who is elsewhere mentioned herein as president judge of the Fifth Judicial District, from which office he resigned on May 25, 1824, on his appointment as judge of the United States District Court, wherein he served until the appointment of Judge Irwin on April 14, 1831.

Judge Wilkins was succeeded by Thomas Irwin, who was nominated on April 14, 1831, and confirmed on March 2, 1832. Judge Irwin was born at Philadelphia on February 22, 1785. He was a son of Colonel Matthew Irwin (1740-1800), a native of Ireland, who was Recorder of Philadelphia in 1785 and became Master of the Rolls in 1790. His mother was a daughter of Benjamin Mifflin, who came to Pennsylvania with Penn in 1682. The son was educated at Franklin College. He became editor of the "Philadelphia Repository" in 1804, and was admitted to the bar in 1808, when he removed to Natchitoches, Louisiana, where he practiced for two years. He then removed to Uniontown in 1810. He was a member of the General Assembly from 1824 to 1826, and a member of Congress from 1829 to 1831. He was appointed judge of the District Court on April 14, 1831, and served until the appointment of his successor on February 8, 1859. He died at Pittsburgh on May 14, 1870.

Judge Irwin was succeeded by Wilson McCandless, who was born at Pittsburgh, on June 19, 1810, graduated from the Western University of Pennsylvania with the class of 1826, and was admitted to the bar on June 15, 1831. He was a member of the Pennsylvania Electoral College in the presidential elections of 1844, 1852 and 1856. He was appointed judge of the United States District Court on February 8, 1859, and served until 1876, when by a special act of Congress he was permitted to retire on full pay, although he had not attained his seventieth year. He died at Pittsburgh on June 30, 1882. Judge McCandless is said to have been a model lawyer at the bar and a model judge on the bench.

Judge McCandless was succeeded by Winthrop W. Ketcham, who was born in Luzerne county in 1820, and educated at the Wilkes-Barre Academy, at which he became a professor after his graduation. He was admitted to the Luzerne county bar in 1848. He served at various times as prothonotary of Luzerne county, a member of the State House of Representatives, a member of Congress, and as a State Senator. He resigned from the senate to accept the appointment of judge of the Western District on June 26, 1876, in which office he served until his death in December, 1879. He was appointed by President Lincoln Chief Justice of Nebraska Territory, but declined the appointment.

Judge Ketcham was succeeded by Marcus W. Acheson, who was born at Washington, Pennsylvania, on June 7, 1828, and graduated from Washington College in 1846. He read law with his brother, Alexander W. Acheson, and was admitted to the Washington county bar in 1852, when he removed to Pittsburgh and was admitted to the bar of that county in the same year. In 1860 he formed a partnership with George P. Hamilton, under the firm name of Hamilton & Acheson, which continued for a number of years.

Mr. Acheson was appointed judge of the United States District Court for the Western District of Pennsylvania on January 7, 1880, and served in that capacity until January 23, 1891, when he was appointed United States Circuit Judge for the Third Federal Judicial Circuit com-

posed of the States of Pennsylvania, New Jersey and Delaware. At that time he was the only judge of the circuit, and held court in Pittsburgh, Erie, Scranton, Williamsport, Philadelphia, Trenton and Wilmington. When the United States Circuit Court of Appeals was organized in 1891, he became and continued until his death presiding judge of that court for the Third Circuit. He also continued to perform the duties of circuit judge, but there being two additional circuit judges for the Third District, his presence as a circuit judge was generally required only at Pittsburgh. He died on June 21, 1906, leaving no case argued before him undecided.

The successor of Judge Acheson was James H. Reed, who was born September 10, 1853, in Allegheny county, and graduated from the Western University of Pennsylvania with the class of 1872. He studied law with David Reed and was admitted to the bar on July 17, 1875. He was appointed district judge on February 20, 1891, and served until January 15, 1892, when he resigned and formed a partnership with Philander Chase Knox, under the name of Knox & Reed, which continued until the appointment of Mr. Knox as Attorney General of the United States in 1901. He is now the senior partner of Reed, Smith, Shaw & Beale.

Judge Reed was succeeded by Joseph Buffington, who was born at Kittanning on September 5, 1855. He was educated in the public schools of Kittanning and at Trinity College, Hartford, Connecticut, from which institution he graduated in 1875. He studied law in the office of James B. Neale, and afterwards with James A. Logan, and was admitted to the bar of Armstrong county in 1876, when he formed a partnership with James B. Neale, and on the election of Mr. Neale as president judge of that county associated himself with his brother, Orr Buffington. He was appointed district judge on February 23, 1892, and served until September, 1906, when he was appointed judge of the United States Circuit Court of Appeals of the Third Judicial District, in which office he is still serving.

The successor of Judge Buffington was Nathaniel Ewing, who is elsewhere mentioned as president judge of the Fourteenth Judicial District. He was appointed district judge on September 25, 1906, and served until January, 1908.

Judge Ewing was succeeded by James S. Young, elsewhere mentioned as a judge of Court of Common Pleas No. 2 of the Fifth Judicial District. He was appointed district judge on January 22, 1908, and served until his death in 1914.

By the Act of Congress of March 3, 1911, XXXVI Stats. at L., 1087, it was provided *inter alia* that there should be an additional district judge in the Eastern District and also one in the Western District, and Charles Prentiss Orr was appointed such additional judge. Judge Orr was born at Allegheny City on February 22, 1858. He graduated from the Pittsburgh Central High School with the class of 1875, and from Hamilton College, New York, with the class of 1879. He studied law with Thomas C. Laseare and was admitted to the Allegheny county bar on December 31, 1881.

On the death of Judge Young in 1914, he was succeeded by W. H. Seward Thomson, who was born in Beaver county on November 16, 1856. He was educated in the public schools, at the Academy of Cattlesburg, Kentucky, at Marshall College, Huntington, West Virginia, and Washington and Jefferson College. He was first admitted to the bar in Cabell county, West Virginia, afterwards removing to Beaver county, where he formed a partnership with J. Rankin Martin. He removed to Pittsburgh in March, 1894, and was engaged in practice there until appointed to succeed James S. Young on July 21, 1914.

CHAPTER XXXVI.

CHIEF JUSTICE TILGHMAN.

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Chief Justice Tilghman.

William Tilghman was born on the 12th of August, 1756, upon the estate of his father, in Talbot county, on the Eastern Shore of Maryland, about a mile from the town of Easton. His paternal great-grandfather, Richard Tilghman, emigrated to that Province from Kent county, in England, about the year 1662, and settled on Chester river, in Queen Anne's county.

His father, James Tilghman, a distinguished lawyer, is well known to the profession in Pennsylvania as Secretary of the Proprietary Land Office, and as having brought that department, by the accuracy of his mind and the steadiness of his purpose, into a system as much remarked for order and equity, as from its early defects it threatened to be otherwise. His maternal grandfather was Tench Francis, the elder, one of the most eminent lawyers of the province, the brother of Richard Francis, author of "Maxims of Equity," and of Dr. Philip Francis, the translator of Horace. It is not surprising to find, among the collateral ancestors of the late Chief Justice, the author of one of the earliest compends of scientific equity, and a scholar accomplished in the literature of the age of Augustus.

In 1762, his family removed from Maryland to Philadelphia. In the succeeding year he was placed at the Academy, and in the regular progress of the classes came under the instruction of Mr. Beveridge, from whom he received his foundation in Latin and Greek. Upon the death of Beveridge, his place was filled provisionally by Mr. Wallis, who was perfectly skilled in the prosody of those languages, and who imparted to his pupils an accuracy of which the Chief Justice was a striking example.

Mr. Davidson, the author of the grammar, succeeded Beveridge, and with him the subject of this discourse remained till he entered the college in the year 1769, Dr. Smith being then the provost, and Dr. Francis Allison the vice-provost, the latter of whom instructed the students in the higher Greek and Latin classics; and such was the devotion to literature of the eminent pupil of whom we are speaking that after he had received the Bachelor's degree, and was in the ordinary sense prepared for a profession, he continued for some time to read the classics with the benefit of Dr. Allison's prelections.

In February, 1772, he began the study of the law in Philadelphia under the direction of the late Benjamin Chew, then at the head of his

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Note.—This chapter is an abridgement of Horace Binney's Eulogy on Judge Tilghman.

profession, afterwards Chief Justice of the Supreme Court of Pennsylvania, and, at the close of the High Court of Errors and Appeals its venerable president. In the office of this gentleman he continued until December, 1776, devoting himself to Littleton and Coke and Plowden and the other fathers of the common law, at that time the manuals of the legal student, and at no time postponed in his estimation and regard to the more popular treatise of later days. From 1776 to 1783, partly on his father's estate, and partly at Chestertown, whither his family had removed, he continued to pursue his legal studies, reading deeply and laboriously, as he has himself recorded, and applying his intervals of leisure to the education of a younger brother. When, therefore, in the spring of 1783, he was admitted to the courts of Maryland, we may infer that an apprenticeship of eleven years had filled his mind with legal principles sufficient to guide and enlighten him for the rest of his life.

In 1788 and for some successive years he was elected a representative to the Legislature of Maryland. His temper and habits were not perfectly congenial with active political life, nor was he at any time attracted by that career; but he was a Republican, in the catholic sense, and took an active part in procuring the adoption of the Federal Constitution, to which, as well as to its founders and great first administrator, he felt and uniformly declared the most profound attachment.

In 1793, a few months previous to his marriage with Miss Margaret Allen, the daughter of Mrs. James Allen, he returned to Philadelphia and commenced the practice of the law, which he prosecuted until his appointment by President Adams, on the 3d of March, 1801, as Chief Judge of the Circuit Court of the United States for this circuit.

His powers as an advocate, but more especially his learning and judgment, were held in great respect by this community, surrounded notwithstanding as he was by men of the first eminence in the land. His law arguments were remarkable for the distinctness with which he presented his case, and for the perspicuity and accuracy with which his legal references were made to sustain it. He was concise, simple, occasionally nervous, and uniformly faithful to the court, as he was to the client. But the force of his intellect resided in his judgment; and even higher faculties than his as an advocate would have been thrown comparatively into the shade by the more striking light which surrounded his path as a judge.

The court in which his judicial ability was first made known had but a short existence. It was established at the close of the second administration of our government; and although this particular measure was deemed by wise men on all sides, and is still cited by many of them, as the happiest organization of the Federal Judiciary, yet, having grown up amid the contentions of party, it was not spared by that which spares nothing. In a year after its enactment the law which erected the court was repealed; and judges who had received their commissions during good behaviour were deprived of their offices without the imputation of a fault.

After the abolition of the Circuit Court, Mr. Tilghman resumed the practice of his profession, and continued it until the 31st July, 1805, when he was appointed president of the Court of Common Pleas in the First District. He remained but a few months in the Common Pleas. In the beginning of the year 1806, Mr. Shippen, the Chief Justice of the Supreme Court, yielded to the claims of a venerable old age by retiring from the office, and on the 25th of February Mr. Tilghman was commissioned in his place by Governor McKean, himself a great lawyer and judge, and interested as a father in the court which he had led on to distinguished reputation in the United States.

From the time that he took his seat on the bench at March Term, 1806, for the space of more than ten years, he delivered an opinion in every case but five, the arguments in four of which he was prevented from hearing by sickness, and in one by domestic affliction; and in more than two hundred and fifty cases he either pronounced the judgment of the court or his brethren concurred in his opinion and reasons without a comment.

His attention from the beginning to the end of the twenty-one years that he presided in the Supreme Court was undeviatingly given to every case; and he prepared himself for all that required consideration at his chamber by taking an accurate note of the authorities cited by counsel, and of the principal heads and illustrations of their argument. This labour was not performed to accumulate the evidences of his devotion to business, nor under subjection to an inveterate habit. He was far above all this. He did it under a sense of conscientious duty to retain such minutes as would enable him to examine the authorities and to review the observations of counsel, after the illusion and perhaps the excitement of the public discussion had gone by. The contents of twenty volumes of reports and upwards of two thousand judgments, most of them elaborate, all of them sufficiently reasoned, very few upon matters of practice or on points of fugitive interest, attest the devotion of his judicial life.

In addition to these strictly official duties, the legislature of Pennsylvania committed to the judges of the Supreme Court, in the year 1807, the critical duty of reporting the English statutes in force within this Commonwealth. The duty is called *critical,* for so undoubtedly it was considered by the Chief Justice. The services exacted an unlimited knowledge of our colonial legislation and of the practice and administration of the law in the Province, through a period of nearly a century, in which there was not the light of a reported case. It required also an intimate familiarity with the written law of England, its history both political and legal, and a knowledge of the impressions which it had given to and received from the common law during the course of many centuries. The selection moreover was to be made in the chambers of the judges, without the aid of that best of all devices for eliciting the truth, an ardent, free and ingenuous discussion by counsel. The task was Herculean. In the course however of less than two years it was performed; and the profession and the public are indebted to it for an invaluable standard of reference in a province of the law before that time without path or

guide. It is not perfect. It has not the obligation of judicial authority. Some statutes are perhaps omitted. Still, the original work will remain as a monument to those by whom it was erected and who may now be said to rest beneath it. If it shall increase at all, it will be by the contributions which the hand of respect and affection shall bring to swell the tribute to the venerable dead.

The labours thus recited, in addition to what we know to have been performed at nisi prius and in circuits through the State, entitle this eminent judge to the praise of great industry. It was, however, industry of the highest order—a constant action of the intellect practically applied.

But the character of his mind as it shines forth in his judgments is a subject of much livelier interest. The first great property which they disclose is his veneration of the law, and, above all, of the fundamental Common Law. There is not a line from his pen that trifles with the sacred deposit in his hands, by claiming to fashion it according to a private opinion of what it ought to be. Judicial legislation he abhorred. His first inquiry in every case was of the oracles of the law for their response; and when he obtained it, notwithstanding his clear perception of the justice of the cause, and his intense desire to reach it, if it was not the justice of the law he dared not to administer it. He acted upon the sentiment of Lord Bacon, that it is the foulest injustice to remove landmarks, and that to corrupt the law is to poison the very fountain of justice. With a conscientiousness that to the errors of the science there are some limits, but none to the evils of a licentious invasion of it, he left it to our annual legislators to correct such defects in the system, as time either created or exposed: and better foundation in the law can no man lay.

Those who study his opinions, while they may remark that he was unusually sparing of references to authority, will find that it was the result of selection and not of penury. He was not, however, what is sometimes termed a great case-lawyer. His memory did not appear to be tenacious of insulated decisions; nor is it usual for men of philosophical minds, who arrange the learning of their profession by the aid of general principles, to be distinguished by their recollection of particular facts. With the leading cases under every head, those which may be called the *light-houses* of the law, he was familiar, and knew their bearings upon every passage into this deeply indented territory; but for the minor points, the soundings that are marked so profusely upon modern charts of the law, he trusted too much to the length and employment of his own line to oppress his memory with them. It was not his practice to bring into his judgments an historical account of the legal doctrine on which they turned, nor to illustrate them by frequent references to other codes, to which, nevertheless, he was perfectly competent by the variety as well as by the extent of his studies. His preference was rather to deduce the sentence he was about to pronounce, as a logical consequence from some proposition of law which he had previously stated and settled, with great brevity. No judge was ever more free both in

mind and style from everything like technicality. He never assigned a technical reason for anything, if another were at command, or if not, without sustaining the artificial reason by an explanation of its grounds. At the same time his knowledge embraced all the refinements of the law, and he took an obvious satisfaction in showing their connexion with substantial justice.

His judgments were further distinguished by perspicuity, precision and singleness. No careful reader was ever at a loss for the meaning of the Chief Justice, and his whole meaning. His language is transparent; you see through it instantly the purpose of the writer. There is no involution, no parenthesis, no complication. Everything is direct, natural and explicit. His style without being dry, and possessing upon proper occasions such embellishments, even, as a severe and critical taste would permit, is made up, in general, of terms and phrases so entirely ascertained in their meaning as to defy the extraction of a double sense, —excellence of the very first order in judicial compositions. This precision was the result of an accurate adjustment of the argument before he committed it to paper. His opinions, such as they appear in the earliest reports of them, were published from the first draught, in which it was rare to find either erasure or interlineation. All his opinions are, moreover, remarkable for their admirable common sense and their adaption to the common understanding. There is no reaching after what is recondite or abstruse,—no affectation of science. The language of the law, as he uses it, is vernacular, and his arguments are the most simple that the case will bear. They are not an intricate web in which filaments separately weak obtain strength by their union, but a chain whose firmness arises from the solidity of its links and not from the artifice of their connexion.

In some particulars of great interest to the profession, the late Chief Justice had the merit of relieving our code from perversion and obscurity of this description. He has certainly reinstated a statute of indispensable use, and which was imperceptibly giving way to judicial legislation here, as it has thoroughly done in England, the Statute of Limitations in actions of assumpsit. On this subject he distinctly led the way in Pennsylvania; and in every particular in which he was not restrained by authority he has brought our courts back to the true interpretation. He has, as it were, reclaimed this resting place for the unfortunate from an irruption of the ocean.

He led the very way also, and has resolutely persevered, in opening the large rivers of this Commonwealth to the great work of public improvement, by rejecting the inapplicable definitions of the English common law, which would have subjected them to the claim of the riparian owners. He has followed up that work which his father is said to have begun, by giving the force of his mind and influence to the establishment of such rules as make the Land Office system harmonize with every other part of our code.

But his great work, that at which he labored with constant solicitude,

but with scarcely a passing hint that he was engaged in it, is the thorough incorporation of the principles of scientific equity with the law of Pennsylvania, or rather the reiterated recognition by the bench, that with few exceptions they form an inseparable part of that law. He achieved this work without the slightest innovation upon legal forms, upholding them on the contrary as the only instruments for the administration of equity, except where the legislature otherwise directs. No one ever knew him usurp a power of any kind, still less a power of chancery, of which his very affection for the system seemed to make him apprehensive. He has expressed the opinion that the legislature would, at no distant day, find it expedient to provide for Trusts, as well as for other subjects of chancery jurisdiction; but, in the meantime, he has taught us how to clothe a large body of equity principles in the drapery of the law. In those cases in which equity consists in the very methods of her administration, the Chief Justice looked for final relief from the representatives of the people; and he waited patiently, and was content that they should wait, the instruction of time.

Let it not be supposed, however, because he was deeply imbued with the principles of equity, that he was therefore latitudinarian. His equity was as scientific as his law. It was the equity of the Hardwickes, the Thurlows and the Eldons of England, of the Marshalls, the Washingtons and the Kents of the United States;—an equity without discretion, fixed as the principles of the common law, and, like it, worthy of the freemen of whose fortunes it disposes.

In the department of penal laws he was relieved by his office from frequent labours, although he annually presided in a court of oyer and terminer for Philadelphia county. His knowledge of this branch of the law was extensive and accurate; his judgment in it, as in every other, was admirable. His own exemption from moral infirmity might be supposed to have made him severe in his reckonings with the guilty; but it is the quality of minds as pure as his to look with compassion upon those who have fallen from virtue. He could not but pronounce the sentence of the law upon such as were condemned to hear it; but the calmness, the dignity, the impartiality with which he ordered their trials, the deep attention which he gave to such as involved life, and the touching manner of his last office to the convicted, demonstrated his sense of the peculiar responsibility which belonged to this part of his functions. In civil controversies, such excepted as by some feature of injustice demanded a notice of the parties, he reduced the issue pretty much to an abstract form, and solved it as if it had been an algebraic problem. But in criminal cases there was a constant reference to the wretched persons whose fate was suspended before him; and in the very celerity with which he endeavored to dispose of the accusation he evinced his sympathy. It was his invariable effort, without regard to his own health, to finish a capital case at one sitting, if any portion of the night would suffice for the object; and one of his declared motives was to terminate as soon as possible that harrowing solicitude, worse even than the worst certainty, which a protracted trial

brings to the unhappy prisoner. He never pronounced the sentence of death without severe pain; in the first instance it was the occasion of anguish. In this, as in many other points, he bore a strong resemblance to Sir Matthew Hale. His awful reverence of the great Judge of all mankind, and the humility with which he habitually walked in that presence, made him uplift the sword of justice as if it scarcely belonged to man, himself a suppliant, to let it fall on the neck of his fellowman.

His early education, it has been remarked, was excellent. He was an accomplished Latin scholar, but, to his own regret, had suffered his Greek to fall away by desuetude. The literature of the former language, he kept constantly fresh in his mind. His memory was stored with beautiful Latin, which he has been heard to repeat as it were to himself, when the occasion recalled it, and his modesty did not care to pronounce it aloud. On all his circuits and journeys into the districts of the Supreme Court, his companions were the Bible, a Latin author, and some recent treatise of distinction in the law. Upon the last that he ever made, he refreshed his recollections of the Pharsalia. It is perhaps no idle fancy to suppose that he may have then read, with almost a personal application, the prophetic appeal of the Spectre to the race of Pompey:

"Veniet quae misceat omnes
Hora duces. Properate Mori."

Such a name and such an example are of great efficacy in the inquiry concerning the fittest basis of liberal education. All the faculties of his mind were thoroughly developed,—he accumulated large stores of knowledge,—he brought them into daily use,—he reasoned accurately,— he conversed elegantly,—his taste was refined,—the pleasures which it brought to him were pure,—his imagination was replete with the beautiful forms of ancient poetry,—he was adequate to the functions of one of the most exalted offices,—he knew little of the natural sciences,—and his education was such as has been described.

While the Chief Justice continued his intercourse with the learned ancients, he found leisure in the intervals of office for the literature of his own language, in which he was extensively versed and for which he possessed the keenest relish; and it is to these two sources that he owed the purity of his style, where nothing coarse or vulgar ever appeared, and which, without being affected or elaborate, was remarkable for the absence of all words of questionable authority.

His moral qualities were of the highest order. It has been said that the panegyrists of great men can rarely direct the eye with safety to their early years, for fear of lighting upon the traces of some irregular passion. But to the subject of this discourse may with justice be applied the praise of the Chancellor D'Aguesseau, that he was never known to take a single step out of the narrow path of wisdom, and that although it was sometimes remarked he had been young, it was for the purpose not of palliating a defect but of doing greater honour to his virtues. Of his early life, few of his cotemporaries remain to speak; but those few attest what the har-

mony of his whole character in later years would infer, that his youth gave presage by its sobriety and examplary rectitude, of all that we witnessed and admired in the maturity of his character. It is great praise to say of so excellent a judge that there was no contrariety between his judgments and his life,—that there was a perfect consent between his public and his private manners,—that he was an engaging example of all he taught,—and that no reproach which, in his multifarious employment, he was compelled to utter against all the forms of injustice, public and private, social and domestic,—against all violations of law, from crime down to those irregularities at which, from general infirmity, there is a general connivance,—in no instance, did the sting of his reproach wound his own bosom. Yet it was in his life only, and not in his pretensions, that you discerned this his fortunate superiority to others. In his private walks he was the most unpretending of men. He bore constantly about him those characteristics of true greatness, simplicity and modesty. Shall I add, that the memory of all his acquaintance may be challenged to repeat from his most unrestrained conversation one word or allusion that might not have fallen with propriety upon the ear of the most fastidious delicacy.

His manners in society were unusually attractive to those who were so fortunate as to possess his esteem; and they were the reverse to none except those who had given him cause to withhold it. Their great charm was sincerity; and though unassuming and retired, they never failed to show the impress of that refinement in which he had passed his life.

The kindness of his nature appeared in the intercourse that he maintained with his fellow citizens, notwithstanding the claims of his station. He probably entertained Mr. Burke's opinion, that *as it is public justice that holds the community together, the Judges ought to be of a reserved and retired character, and wholly unconnected with the political world.* He certainly acted up to all that the sentiment asserts; and he found the benefit of it, the community did also, in a ready submission to those judgments, more than one, in which a suspected infusion of party would have been a disturbing ingredient. No one who knew him in private life had, however, any reason to doubt his opinions when the occasion fitly called for their expression. Not deeming it discreet to meet his fellow-citizens in those assemblies where either politics or their kindred subjects were to be discussed, he seized with the more avidity such occasions of intercourse as were presented by meetings for public improvement, for philosophical inquiry or the cultivation of literature; and in particular he attended with great interest to the concerns of the American Philosopical Society, of which he was chosen president, on the death of Dr. Patterson, in the year 1824, and to those also of the Athenaeum, of which he was the first, and during his life, the only president. The trustees of the University of Pennsylvania rarely missed him from his seat, or the United Episcopal churches of this city from their vestry, as the warden of his venerable friend and pastor, Bishop White. In was in this way that he diminished the distance to which his office removed him from society; keeping, how-

ever, a constant eye upon that office, even when he moved out of its orbit, and taking scrupulous care that no external contact should be of a nature to disturb his movements when he returned to it. He died on the 30th of April, 1827, after a short illness.

CHAPTER XXXVII.

MAYORS' COURTS.

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Mayors' Courts.

The Mayor's Court of Philadelphia has been treated of in a former chapter. Similar courts for certain other cities were provided for by the acts incorporating said cities. Such of these courts as were not abolished by law before 1874 were discontinued by the provisions of the eleventh section of the Schedule of the constitution adopted in that year.

By the Act of March 18, 1816, incorporating the City of Pittsburgh, 6 Smith's Laws, 657, a Mayor's Court was established to consist of the mayor, recorder and aldermen or any four of them, of whom the mayor or recorder should be one. This court had only a criminal jurisdiction. It was abolished by section 9 of the Act of June 12, 1839, P. L. 261.

The Act of March 20, 1818, 7 Smith's Laws, 94, incorporating the city of Lancaster, also established a Mayor's Court for that city similarly constituted to that of Pittsburgh. This court had originally only a criminal jurisdiction, but by the Act of February 24, 1820, 7 Smith's Laws, 253, it was given jurisdiction of all appeals in civil cases from judgments of justices of the peace and aldermen of the city. This court was abolished by the Act of February 6, 1849, P. L. 40.

The Act of March 15, 1851, P. L. 163, incorporating the city of Carbondale, established a Mayor's Court for that city, with both criminal and civil jurisdictions, which were extended by various subsequent acts, the Act of April 12, 1859, P. L. 541, giving jurisdiction in cases of divorce under the Act of May 4, 1855.

The Act of April 23, 1866, P. L. 1034, incorporating the city of Scranton, provided for the establishment of a Mayor's Court for that city similar to and with the like jurisdiction of the Mayor's Court of the city of Carbondale.

CHAPTER XXXVIII.

RESTORATION OF THE ADMINISTRATION OF EQUITY THROUGH CHANCERY FORMS.

CHAPTER XXXVIII.

Restoration of the Administration of Equity Through Chancery Forms.

We have seen in a preceding chapter[1] that after the discontinuance of Keith's Court of Equity in 1736, and the failure of the Assembly to create a court of equity in place thereof, equity ceased to be administered in Pennsylvania through chancery forms, and was thenceforth administered only where special jurisdictions in equity were conferred upon the courts by act of assembly, or through common law forms.

[1] Chapter XXII, Keith's "Courts of Equity."

The commissioners appointed to revise the Civil Code in 1830, in their report made in 1836 to accompany the bill relative to the jurisdictions of the courts, enumerated the special jurisdictions in equity conferred by law up to that time as follows:

After that year [1736] no attempt appears to have been made, either to create a District Court of Chancery, or to invest the common law courts, with general chancery powers.

The Orphans' Court has indeed always been essentially a court of equity.

Its jurisdiction is limited, but within its peculiar range it has from the earliest times exercised many of the functions of a court of chancery.

The Act of 1718, § VIII, gave to this court power to compel obedience by attachment and sequestration "as fully as any court of equity may or can do."

By the Act of 1722, § XIII, the judges of the *Supreme Court* were authorized to "minister justice," and exercise the jurisdiction and powers thereby granted concerning the premises "as fully and amply to all intents and purposes whatsoever, as the justices of the court of Kings' Bench, Common Pleas, and *Exchequer* at Westminster, or any of them may or can do."

The court of *Exchequer* in England has chancery powers, but this section has never been supposed to confer them upon our Supreme Court.

By the same act, § XXI, the courts of common pleas were authorized to "hear and determine all manner of pleas, actions, suits and causes, civil, personal, real and mixed, according to the law and constitution of this province." No express authority to exercise chancery powers was given by this act to them—nor can any be implied.

In 1774 an act was passed "to oblige the *trustees* and *assignees* of insolvent debtors to execute their trusts."

Commissioners were to be appointed by the court, who had authority to call the trustees before them, and compel them to settle their accounts—and to call before them witnesses and examine them, &c. This appears to have been the first attempt to give relief as in equity, in the case of

trustees, and is the only instance of the kind that we have met with previous to the Revolution.

The Constitution of 1776 declared that "The Supreme Court and the several courts of common pleas of this Commonwealth, shall, besides the powers usually exercised by such courts, have the powers of a Court of Chancery, so far as relates to the perpetuating testimony—obtaining evidence from places not within this State, and the care of the persons and estates of those who are *non compotes mentis;* and such other powers as may be found necessary by future General Assemblies, not inconsistent with this constitution."

The first grant of equity powers, subsequently to this constitution, appears to have been occasioned by the frequent complaints of the loss of deeds during the Revolution.

By an act passed the 28th March, 1786, (2nd Smith, 375), power was given to the *Supreme Court,* upon *bill* or *petition* filed, setting forth the loss of deeds, or other writings to issue a *subpoena,* requiring the persons named to appear and make answer on oath, &c.—to refer to a master, and, upon his report, to make such order and decree in the premises as to justice and equity shall appertain. This act was limited to continue in force five years, and consequently expired in 1791. But in 1793 it was revived, and extended to the respective courts of common pleas; and is yet in force.

The next instance of the grant of equity powers was in 1789, when proceedings in the nature of a bill of *discovery* were authorized in the case of *foreign attachment.*

By the Act of 28th September, 1789, (2d Smith, 502,) it was declared that it should be lawful for any plaintiff in a writ of attachment, after judgment obtained against the defendant, to exhibit interrogatories in writing to the garnishees, who were required to file their answers in writing and under oath.

These are all the powers of relief in equity that appear to have been granted or exercised previously to the Constitution of 1790.

We proceed now to inquire, what powers were conferred by the constitution or have since been granted? By express grant in the constitution, the Supreme Court and the several courts of common pleas have powers to grant relief in equity, so far as relates—

1. To the perpetuation of testimony.
2. To the obtaining evidence from places out of the State.
3. To the care of the persons and estates of idiots and lunatics.

1st. The first of these powers has been exercised by the courts directly under the constitution, without any legislative provision respecting it. The proceedings are in accordance with the English chancery practice.

2. The second is exercised by these courts, and indeed by all the courts of the commonwealth, without any chancery forms in the way of commissions, and by rule of court.

The power of determining upon the alleged insanity of persons is exercised upon petition, and through the medium of commissioners and an inquest, according to the practice of chancery; and the appointment of committees of the person and estate is according to the same rules. The legislature has given authority to the courts of common pleas to allow

the sale or mortgage of the real estate of a lunatic, by two acts—one passed in 1814, (6 Smith, 104,) and the other in 1818, (7 Smith, 136.)

Besides the powers expressly given by the constitution, the legislature has from time to time granted authority to the courts to administer relief in equity, in the following cases:

1. *Specific performance of contracts.*

The Act of 31st March, 1792, (3 Smith, 66,) provides for the specific performance of written contracts to sell lands, in cases where the vendor has died. The proceedings are by petition to the Supreme Court or common pleas, in the chancery form; and the court is authorized to make an order empowering the executors or administrators to execute a deed. The Act of 1804, (4 Smith, 158,) extended the authority to the case of executors of executors and administrators *de bonis non.* The Act of 1818, (7 Smith, 79,) authorizing similar proceedings in the case of parol contracts; and the Act of 1821, (id. 355,) applied the remedy to the case of covenants for the release or extinguishment of ground rents. And now, by the Act of 24th February, 1834, it is directed that the proceedings in the case of a contract by a decedent, shall be in the Orphans' Court, who have power to decree the specific performance of the contract.

By the Act of 1794, (3 Smith, 129,) the same proceedings are authorized against the committee of a lunatic.

2d. Very important and useful powers have also been granted in cases of *trusts* and *trustees,* by several acts of Assembly, of which the following is believed to be a correct abstract:

Power has been given to compel a settlement of accounts by assignees of debtors (Act of 24th March, 1818) and other trustees (Act of 1825, Act of 1828)—the proceedings being according to the chancery practice, by citation and answer—interrogatories in place of bill of discovery, &c.

Power to remove *assignees* who are in failing circumstances, or wasting the estate, or neglecting the trust, or about to remove, and to appoint others in their place, (Act of 1818.)

Power to remove *trustees* (created by conveyance, &c.) under similar circumstances, and to appoint others, (Act of 1823.)

Power to appoint *trustees* in all cases, where the duties of the trust cannot be performed, by reason of death, infancy, lunacy, or other inability—or where a trustee named in any deed or will refuses to act, or where one of several is dead, (Acts of 1825 and 1828.)

Power to *discharge trustees* on their own application, after settlement of accounts, &c. (Acts of 1825 and 1828.)

Power to *compel trustees* to convey the legal estate, where the trust has expired, (*ibid.*)

Power to compel *trustees in domestic attachment* to settle their accounts, and to dismiss or discharge them. (Act of 1829.)

Power to dismiss *assignees* under a voluntary assignment, and appoint others, (Act of 1831.)

Power to compel *trustees* for *religious* and *charitable* societies, to account; and to dismiss them and appoint others in their stead, (Act of 17th February, 1818.)

These powers are now vested in the respective courts of common pleas, as well as in the Supreme Court, and in some instances in the District Courts.

Besides these general authorities, there are many special acts of Assembly, giving powers to the courts to grant relief in equity in particular cases of trust.

3d. Power has been conferred on the courts to give relief in certain cases by compelling answers on oath to interrogatories in the nature of a bill of discovery.

In the case of *stock* in a *body corporate,* owned by a debtor, the Act of 1819 authorizes interrogatories to be administered to the person in whose name the stock is held and requires answers on oath.

In the case of *assignees' accounts,* by the Act of 1828 auditors are authorized to examine them on oath touching their account.

In the case of *Corporations,* against whom a judgment may be obtained, with a return of *nulla bona* to an execution, citation may issue to any officer a member, and answers on oath to interrogatories may be required and compelled.—(Act of 1828.)

In one particular instance the legislature has gone the whole length of creating an equity tribunal, with plenary powers, viz. In the act passed 29th March, 1824, entitled "An act to provide for the settlement of the concerns of the Marietta and Susquehanna Trading Company." The first section declares that the District Court of Lancaster *"shall have all the authority, powers and jurisdiction of a court of equity,* so far as relates to the Marietta and Susquehanna Trading Company, its trustees, debtors, creditors and stockholders, or any other person or persons interested in the concerns of the said company." The second section provides for the mode of proceeding, which is to be by bill and answer. The decree is to be according to "equity and law." The bill is to be taken *pro confesso,* if the party does not appear and make answer. If money be decreed, execution is to issue as on judgment. If anything is to be done by the party, the decree may be enforced by attachment and sequestration.

Analagous to the proceedings in chancery, though the cases are not within the jurisdiction of the English chancellor, are the proceedings in cases of *Divorce,* (Act of 1815,) and *Habitual Drunkards,* (Act of 1819 and 1822.)

There may possibly be other instances, besides those which we have enumerated, of *express* powers to give "relief in equity," granted by the legislature to the courts since the adoption of the constitution, the exercise of which was directed to be according to the method pursued in a court of chancery. But if such, they have escaped our search. It will be perceived that we have not adverted to the powers exercised from the beginning by the Supreme Courts and the Comman Pleas, of giving relief and administering equity through the *ordinary common law forms.*

The following account of the manner in which equity was and is administered through common law forms is taken from the address of Judge John W. Simonton delivered at the first annual meeting of the Pennsylvania Bar Association:

We find in the earliest reported cases that equity is declared to be a part of the law, while the only courts in existence were in form of courts of common law. Thus in Swift vs. Hawkins, decided in 1768 (1 Dall., 17), where, under the plea of payment, it was objected that want of consideration could not be given in evidence, Chief Justice Allen said: There

being no court of chancery in this province, there is a necessity, in order to prevent a failure of justice, to let the defendants in under the plea of payment, to prove mistake or want of consideration; and this, he said, had been the constant practice for thirty-nine years past,—which would go back to 1730.

In Mackey vs. Brownfield (13 S. & R., 240), Judge Duncan says the above case is "The Magna Charta of this branch of equity, and has been, ever since, followed; and rules of court universally established, requiring notice of the special matter, fraud or failure of consideration, intended to be given in evidence, in avoidance of the bond; this notice answering to a bill in equity for relief, on the ground of fraud, accident, or mistake; and our common law courts, by the instrumentality of a jury, grant relief, just as the chancellor does—according to the dictates of his conscience, governed by equitable rules."

In other words, equity principles had survived during the more than one hundred years since the settlement of the colony; while chancery forms by means of which these principles were, during that time, and have since, until recently, continued to be administered and applied in England, had disappeared. The problem which confronted the courts, as they understood it, was therefore how to apply and administer these principles under and by the use of the common law forms. That they were greatly embarassed in working out this problem is manifest. Complaints and regrets of the want of chancery forms are numerous in the opinions of the judges of the Supreme Court through the first half of this century. At the same time, however, they were, in the main, steadfast and resolute in their determination to accomplish the result; and if they sometimes felt themselves hampered or limited for the want of the more flexible forms used in chancery, they would act in the spirit expressed on one occasion by Chief Justice Gibson, when he said: "That we cannot do everything is no reason for not doing anything." . . .

It was the opinion of Blackstone that the separation of the jurisprudence of England into law and equity might readily have been avoided. In Book 3 of the Commentaries (p. 48) after saying that "The distinction between law and equity as administered in different courts is not at present known, nor seems to have ever been known, in any other country, at any time," and that, in his opinion, "In early times the chief judicial employment of the chancellor must have been in devising new writs directed to the courts of common law, to give remedy in cases where none was before administered;" he refers to the Statute of Westmin. 2, which enacted that "whensoever from thenceforth, in one case a writ shall be found in chancery, and in a like case falling under the same right, and requiring like remedy, no precedent of a writ can be produced, the clerks in chancery shall agree in forming a new one, and, if they cannot agree, it shall be adjourned to the next parliament, where a writ shall be framed by consent of the learned in the law, lest it happen for the future that the court of our lord, the king, be deficient in doing justice to the suitors." And of this statute he says: "Which provision, with a little accuracy in the clerks of the chancery, and a little liberality in the judges, by extending rather than narrowing the remedial effects of the writ, might have effectually answered all the purposes of a court of equity; except that of obtaining a discovery by the oath of the defendant;" which last pur-

pose has now been effectually accomplished by legislative enactments making parties competent witnesses.

Judge Rogers, in Martzell vs. Stauffer (3 P. & W., 398), after citing the above from Blackstone, says: "As we have no clerk in chancery it is the duty of the courts themselves so to fashion our remedies as to administer relief to suitors according to the exigency of their business and adapted as near as may be, without violence to the forms of action, to the specialty, reason and equity of his very case. And unless some liberality is shown by the courts in this respect, we must give up the boast of the common law that there is no wrong without a remedy."

As is said by the Revisers (2 Park & John, 815), this Statute of Westm. 2 was declared by the Judges to be in force in Pennsylvania (Robert's Digest, p. 158), and it does not seem entirely easy to understand why the Supreme Court instead of complaining of the want of power, and being in fear of "doing violence to the forms of action" did not act upon Blackstone's opinion by devising new forms or adopting those already in use in chancery under the power conferred on them by this Statute. Moreover, it does not seem possible that a court could be powerless to supply and enforce principles which it recognized to be the law of the land. This view evidently occurred to Judge Gibson, for in Loan Co. vs. Elliott (15 Pa., 224), he said "when this court first declared equity to be part of the law of Pennsylvania, it had one of two things to do in order to carry its declaration out—either to assume the powers of a court of chancery, or to strain relief through common law forms, disregarding technical congruity when found to stand in the way of justice. Unfortunately, it attempted a middle course . . . A plaintiff has been allowed to declare on a lost bond without a profert; a defendant has been allowed to plead matter of equitable defense specially; and many other departures from common law rule have been sanctioned. We have not yet gone so far as to disregard the form of the writ, count or judgment; but why should we not do so when justice cries out for it, and there is no other way to appease her clamor? or why should we choose to give relief in handcuffs? From the moment the court departed in the least from technical form, there could be no stopping place short of perfect and entire justice." And speaking of the case before him, he adds: "The action is essentially a bill in equity, and the fashion of its drapery is surely not a matter of the first importance. If it were so, no common law action could be substituted for a bill in any case; and to sustain it in this instance, though irregular even as an action, requires this court to go only a step further than it has already gone." Whereupon the Court took the necessary steps to sustain an action against a surviving promisor and the executors of a deceased co-promisor.

If the Court had uniformly acted on this principle, and especially if it had exercised the powers conferred upon it by the Statute of Westm. 2, it could have not only adopted entire equity principles, but could have devised and adopted forms, and administered all equitable relief required; and there would have been no necessity for the frequent complaints made by the Judges that while they recognized and applied equity principles, they did not possess chancery powers. That they did not cast off entirely the shackles of form imposed by common law procedure, shows only the force of education and custom; that they did so to such a great degree

speaks well for their sense of right, and shows the grasp they had obtained upon the fundamental principles of equity. How much they were influenced by these is seen in the declaration of Judge Gibson in Torr's Estate (2 R. 252), decided in 1830, that "Equity is a part of our law; and I would just as willingly disturb the foundations of the common law, laid in the time of Lord Coke, as shake a principle of equity settled by Lord Talbot, Hardwicke, or Northington. We ought to disclaim everything like a discretion to adopt or reject, according to our notions of expediency; nor if we had the power, is there one of those principles which I would desire to reject."

One of the beneficial effects of the want of a court of chancery on the administration of justice in Pennsylvania, was that in many cases it was much simplified. Some illustrations of this may be given. Thus in 1817 in New York, King vs. Baliken (3 John. Ch. Ca., 559), Chancellor Kent decided that a surety was not discharged from liability by calling upon the creditor to bring suit against the principal debtor and the refusal of the creditor so to do; founding his opinion mainly on the fact that the surety could go into a court of chancery and obtain a decree compelling the creditor to sue. But when this question arose in Pennsylvania in 1822 (Cope vs. Smith, 8 S. & R., 110), our Court had no difficulty in holding that where such a request and refusal were clearly proved, the surety was discharged; the controlling reason for this conclusion being that as the Court was bound to administer equity and had no chancery forms through which this could be done, a request to bring suit which in equity ought to be acted upon by the creditor, should be held equivalent to a decree of a court of chancery ordering him so to do; and his refusal equivalent to disobedience to such decree. Thus equity as understood both by Chancellor Kent and Chief Justice Tilghman, entitled the surety under the facts stated to be discharged; but having the formal means of working out this equity, Chancellor Kent decided that he must first prove the facts in the court of chancery and get its decree ordering the creditor to proceed, and if he refused and brought an action in a court of law upon the obligation, the surety could set up the decree in chancery, and the failure of the creditor to obey, as a defense. Chief Justice Tilghman disposed of the matter in a much simpler way, by declaring that the surety might prove his whole case in the action against him for the debt.

The one condition imposed by Judge Tilghman was that the demand on the creditor to bring an action against the principal debtor must be positive, and be proved clearly and beyond all doubt, and be accompanied by a declaration that unless it be complied with the surety will consider himself discharged. Compliance with these conditions obviated entirely the principal objection made by Chancellor Kent, who saw the danger of relying upon the proof of a request having been made, and of its precise terms. Acting in the spirit of the conditions imposed by Judge Tilghman, the legislature, in 1874, enacted that the notice must be in writing, thus effectually disposing of the difficulty of proof.

Another illustration is furnished where two were bound jointly in a bond. In such a case one could not show in a jurisdiction where there was a court of chancery, in an action against him on the bond, that he was merely a surety and claim to be discharged for laches of the creditor. To obtain equity as against his creditor he was obliged to go into a court

of chancery for a decree declaring him to be a surety, and requiring the creditor to proceed against the principal debtor. But in Pennsylvania, in an action against him, he can show the real relation existing between himself and the principal debtor, and obtain all the relief in the action which could be had in a court of chancery.

Still another illustration is to be found in the case of Jamison vs. Brady (6 S. & R., 466), where the facts being such that in a jurisdiction having a court of chancery, a decree would have been made requiring the husband to make a conveyance to a trustee for his wife, the Court said: "In this State, where there is no court of chancery, no decree can be made for the husband to convey to a trustee. Nevertheless, it is his duty to do so; and if he does not the courts of law will consider him a trustee, and the wife will have all the beneficial effects flowing from that consideration.

So it was early held in Auwerter vs. Mathiot (9 S. & R., 402), that "by the law of Pennsylvania all the real estate of the debtor, whether legal or equitable, is bound by a judgment against him, and may be taken in execution and sold for the satisfaction of the debt. At common law, an equitable estate is not bound by a judgment or subject to an execution; but the creditor may have relief in chancery. We have no courts of chancery, and have therefore, from necessity, established it as a principle, that both judgments and execution have an immediate operation on equitable estates.

The case of Biddle vs. Moore, (3 Pa., 175), furnishes a good example of the manner in which equitable relief is granted by means of a conditional verdict; and also illustrates the fact that the grant of chancery powers in the Act of 1836 did not oust the jurisdiction of the courts to grant equitable relief under common law forms. In this case, a verdict was rendered in favor of the plaintiff to be released on the payment of a certain amount to him, and also two other different amounts, one to each of two other persons, the Court saying: "The verdict is in substance a decree in chancery with all the certainty which is required. The money belonging to the plaintiff is ordered to be paid to him; the debts to the respective creditors; so that the defendant is at no loss to ascertain to whom the money, in discharge of the liens on the land, is to be paid." And while it was recognized as a departure from common law forms to render such a verdict, it was considered analogous to what would be done in a chancery proceeding. . . .

The fact that equity and law are in Pennsylvania interchangeable terms was not always kept in mind by the judges. Thus in Gilder vs. Merwin (6 Wh., 541), Judge Sergeant decided that under the Act of 1836, which authorizes the granting of injunctions to restrain "the commission or continuance of acts contrary to law," an injunction could not be granted to restrain the issuing of an execution on a judgment, because it cannot be seriously contended that the issuing of an execution on a judgment confessed in a court of law is an act contrary to law; forgetting that, as was said by Judge Lowrie in Stockdale vs. Ullery (37 Pa., 486), virtually overruling the former case, "equity is so much a part of our law that the word 'law' often means both law and equity or either."

North Pennsylvania Coal Co. vs. Snowden (42 Pa., 488), illustrates the real nature of an equity case in Pennsylvania; and the only essential

difference there is between an action at law and a suit in equity, namely, that the right of trial by jury must, as is provided by the Constittuion, remain as heretofore. Hence, the legislature cannot give jurisdiction in chancery against the will of the defendant in a case which was of right triable by jury when the first Constitution of the State was adopted. Another case to the same effect is Tillmes vs. Marsh (67 Pa., 511).

The difference between an equitable case and one at law has been still further lessened by the modifications made in the equity practice by the recent rules promulgated by the Supreme Court under the power given to them in the Act of June 16, 1836, drawn by the Revisers in analogy to, and for the purpose of making more clear, the provisions of the Statute of Westm. 2 above quoted. Indeed there is no practical and hardly any formal difference between the trial of an equity case under these rules and the trial of an ordinary case in which a stipulation has been filed waiving a jury trial. The rules of evidence are the same; the testimony is heard by the court in both; the principles of law to be applied on a like state of facts are identical; and the only possible difference which remains is that in the equity case the form of the judgment may be more flexible and comprehensive than in the case at law. But it cannot be assumed that the judgment either in form or substance will be in any case more comprehensive than the justice of the case demands. I am, therefore, unable to see, since our jurisprudence has reached its present stage of development, why a defendant should be allowed to interpose an objection to the suit being brought against him in the equity form, unless he can show that the nature of the case is such that he is entitled to a jury trial, or that it belongs to a class for which the legislature has provided a special remedy. . . .

A very full description of the manner in which equity is administered in Pennsylvania through common law forms is contained in Volume 1, of Troubat & Haly's Practice, edition of 1880, pages 14-32, to which the reader is referred.

The commissioners to revise the code reported against the establishment of a separate court of chancery and against the union of a court of chancery with the existing courts. They recommended that the common law courts should continue to administer equitable principles through the medium of common law forms as theretofore, but that the several courts should have the jurisdiction and powers of a court of chancery, to be exercised according to the practice in equity prescribed or adopted by the Supreme Court of the United States, unless otherwise provided by Act of Assembly, or by rule of the Supreme Court, for the following purposes:

1. The perpetuation of testimony.
2. The obtaining of evidence from places not within the State.
3. The care of persons and estates of those who are non compos mentis, (which three powers were granted by the Constitution of 1790).
4. The control, removal, and discharge of trustees, and the appointment of trustees and settlement of their accounts;
5. The supervision and control of all corporations, other than those of a municipal character, and unincorporated societies or associations and partnerships;

6. The care of trust-moneys and property, and other moneys and property made liable to the control of the said courts;

7. The discovery of facts material to a just determination of issues and other questions, arising or depending in the said courts;

8. The determination of rights to property or money claimed by two or more persons, and in the hands or possession of a person claiming no right of property therein;

9. The prevention or restraint of the commission or continuance of acts contrary to law, and prejudicial to the interests of the community, or the rights of individuals;

10. The affording specific relief, where a recovery in damages would be an inadequate remedy;

And in such other cases as the said courts have *heretofore* possessed such jurisdiction and powers under the constitution and laws of this commonwealth.

The legislature passed the bill recommended by the revisers, giving to the Supreme Court and to the several courts of common pleas the powers of a court of chancery so far as they related to the first six heads above mentioned, and they gave, in addition, to the Supreme Court, when sitting in banc in Philadelphia, and to the court of common pleas of that county, the jurisdiction of a court of chancery so far as related to the following additional subjects:

1. The supervision and control of partnerships, and corporations other than municipal corporations;

2. The care of trust-moneys and property, and other moneys and property made liable to the control of the said courts;

3. The discovery of facts material to a just determination of issues and other questions, arising or depending in the said courts;

4. The determination of rights to property or money claimed by two or more persons in the hands or possession of a person claiming no right of property therein;

5. The prevention or restraint of the commission or continuance of acts contrary to law and prejudicial to the interests of the community or the rights of individuals; and

6. The affording specific relief where a recovery in damages would be an inadequate remedy.

The jurisdiction under these last named heads was, therefore, withheld from from the State at large and confined to Philadelphia county, and it was expressly provided that no process to be issued, under the chancery powers so granted, by the courts of that county or the Supreme Court sitting therein, should be executed beyond the limits of Philadelphia county.

By Section 39 of the Act of June 13, 1840, P. L. 671, the Court of Common Pleas of Philadelphia County and the Supreme Court within that county, were given equity jurisdiction in all cases over which courts of chancery entertained jurisdiction on the grounds of fraud, accident, mistake or account, and by section 3 of the Act of April 16, 1845, P. L. 542, the words "whether such fraud, accident, mistake or account be actual or constructive" were added.

By Section 19 of the Act of October 13, 1840, P. L. 7, it was provided that the Supreme Court, the several district courts and the courts of common pleas should have all the powers and jurisdiction of courts of chancery in settling partnership accounts, and such other accounts and claims as had theretofore been settled by the action of account render, and that the party might proceed either by bill in equity or at common law, but no bill in equity should be entertained unless counsel should certify that the case was of such a nature that no adequate remedy could be obtained at law, or that the remedy therein should be attended with great inconvenience or delay.

By section 2 of the Act of April 29, 1844, P. L. 525, the District Court of Allegheny County was given all the chancery jurisdictions and powers conferred upon any other court of this Commonwealth, with an appeal to the Supreme Court from the final decree of the district court upon the same conditions and terms as a writ of error was allowed in other cases. Various other acts extending chancery powers were passed from time to time until by section 1 of the Act of February 14, 1857, P. L. 39, it was enacted:

The courts of common pleas of the several counties of this commonwealth, in addition to the powers and jurisdictions heretofore possessed and exercised, shall have the same chancery powers and jurisdictions which are now by law vested in the court of common pleas of the city and county of Philadelphia, and in all cases an appeal may be taken to the Supreme Court from the final decree of the said courts respectively, in suits and proceedings in equity. . . .

By this act, therefore, the administration of equity through chancery forms was re-established throughout the State of Pennsylvania after a period of more than one hundred years.

Other later acts relative to the exercise of a chancery jurisdiction will be found in the digests, but special reference may be here made to the Act of June 7, 1907, P. L. 440, which provides that when a bill in equity has been filed in any court and the defendant desires to question the jurisdiction of the court upon the ground that the suit should have been brought at law, he must do so by demurrer or answer, explicitly so stating, or praying the court to award an issue or issues to try questions of fact. Otherwise the right of trial by jury is deemed to have been waived by both parties, and the cause proceeds to a final determination with the same effect as if upon a hearing before the court, without a jury, upon agreement filed.

CHAPTER XXXIX.

JUSTICES OF THE SUPREME COURT OF THE UNITED STATES APPOINTED FROM PENNSYLVANIA.

CHAPTER XXXIX.

Justices of the Supreme Court of the United States Appointed From Pennsylvania.

James Wilson, the first Justice of the Supreme Court of the United States to be appointed from Pennsylvania, has been elsewhere mentioned herein.

Henry Baldwin, commissioned on January 6, 1830, was born in 1779, in New England, and graduated from Yale University with the class of 1797. He removed to Pennsylvania in early life, read law with Alexander James Dallas, and was admitted to the bar on March 6, 1798. He removed to Pittsburgh, where he was admitted on April 30, 1801, and engaged for many years in an extensive practice. He was elected to Congress in 1816, and reëlected in 1818 and 1822, but resigned before the completion of his last term.

He was a devoted supporter of President Jackson, and it was generally thought that he would be appointed by him Secretary of the Treasury, but in place thereof he was appointed to the Supreme Bench, as the successor of Bushrod Washington. He died on April 21, 1844. He received the degree of Doctor of Laws from Yale College in 1830. He was the author of "A general view of the origin and nature of the Constitution and Government of the United States," published in 1837. He is said to have been a profound lawyer and an impressive speaker, with a commanding and imposing presence.

Robert Cooper Grier, commissioned in August, 1846, was born on March 5, 1794, in Cumberland county, where his father, the Rev. Isaac Grier, resided at that time. Shortly after his birth his father removed to Lycoming county. In 1811 the son entered the junior class of Dickinson College, from which he graduated in 1812, but continued in the college as a teacher until 1813. He studied law with Charles Hall, Esq., of Sunbury, Northumberland county, and was admitted to the bar in 1817. He began practicing at Bloomsburg, removing to Danville in the year 1818, where he soon acquired an extensive practice. On May 4, 1833, he was appointed by Governor Wolfe, president judge of the District Court of Allegheny county, which court was then just created. He served in that capacity until August 4, 1846, when he was nominated and confirmed an Associate Justice of the Supreme Court of the United States, succeeding Henry Baldwin, deceased. He died on September 26, 1870.

William Strong was born at Somers, Connecticut, on May 6, 1808, a descendant of John Strong who went to New England in 1630. His grandfather, Adonijab Strong, was a lawyer and a commissary-general

during the Revolutionary War. His father, William L. Strong, was a prominent Presbyterian clergyman. Judge Strong was the eldest of eleven children. He graduated at Yale in 1828, and taught an academy for some time in New Jersey. Later he took a six months' course at the Yale Law School, and then went to Pennsylvania, where he was admitted to the Bar in 1832, and established himself at Reading, where he soon acquired a large practice and was counsel for the Philadelphia & Reading Railroad Company.

In 1846 he was elected to Congress as a Democrat, but declined a renomination. He was elected to the Supreme Court of Pennsylvania in 1857 and served therein until 1868, when he resigned and resumed the practice of the law in Philadelphia. It is said that Lincoln contemplated appointing him Chief Justice of the United States to succeed Roger B. Taney, but was led by political reasons to appoint Salmon P. Chase instead. In 1870, Judge Strong was appointed to the Supreme Court of the United States, from which he resigned in 1880. He died in 1895. He was one of the judges of the Supreme Court who served upon the Electoral Commission in 1877. He received the degree of LL. D. from Yale and Princeton Universities, and was a lecturer at the Law School of the Columbian University in Washington.

George Shiras, Jr., was born in the city of Pittsburgh, in 1832. He graduated at Yale University in 1853, registered as a law student with Hopewell Hepburn on October 9, 1853, and was admitted to the Allegheny county bar on November 7, 1855. He was commissioned a justice of the Supreme Court of the United States on July 26, 1892, and retired from that office on February 23, 1903, since which time he has lived in retirement.

CHAPTER XL.

JUDICIARY ACTS OF 1826, 1834 AND 1836—CONSTITUTION OF 1838 AND AMENDMENT THERETO OF 1850.

CHAPTER XL.

Judiciary Acts of 1826, 1834 and 1836—Constitution of 1838 and Amendment Thereto of 1850.

By the first section of the Act of April 8, 1826, P. L. 268, the circuit courts of the Supreme Court, which had been abolished by the Act of April 11, 1809, were restored, and it was made the duty of judges of the Supreme Court to hold a circuit court in each county at least once in each year, and by the third section of said act the number of judges of that court was increased from three to five.

By the Act of April 14, 1834, P. L. 333, which was one of the acts prepared by the commissioners appointed to revise the Civil Code, the Courts were reorganized as follows:

The Supreme Court was to consist of a Chief Justice and four Associate Judges, and, for the purpose of holding the court, the Commonwealth was divided into four districts consisting of the Eastern district, composed of the City and County of Philadelphia, and the counties of Bucks, Chester, Delaware, Northampton, Montgomery, Lehigh, Pike and Wayne; the Northern district, composed of the counties of Northumberland, Luzerne, Lycoming, Bradford, McKean, Potter, Tioga, Susquehanna, Columbia and Union; the Middle district, composed of the City and County of Lancaster, and the counties of Dauphin, Berks, Schuylkill, York, Lebanon, Mifflin, Centre, Clearfield, Juniata, Huntington, Cumberland, Bedford, Franklin, Adams and Perry; and the Western district, composed of the City of Pittsburgh and the counties of Allegheny, Somerset, Westmoreland, Fayette, Greene, Washington, Beaver, Butler, Mercer, Crawford, Erie, Warren, Venango, Armstrong, Cambria, Indiana and Jefferson.

The judges of the Supreme Court were to annually hold five terms, two at Philadelphia, for the Eastern district, one term at Harrisburg, for the Middle district, one term at Pittsburgh for the Western district, and one term at Sunbury, for the Northern district.

The circuit courts formerly held by the Supreme Court, abolished in 1809 but restored in 1826, were finally abolished, but courts of nisi prius were to be held as formerly within the city and county of Philadelphia, and not elsewhere.

By the 18th section the Courts of Common Pleas of the several counties, except the county of Philadelphia, were to consist of the president judge of the district and two associate judges appointed for each county.

The judges of the Court of Common Pleas of each county, two of whom constituted a quorum, composed the Court of Quarter Sessions of

the peace thereof, and also had the power to hold courts of oyer and terminer and general jail delivery, when the judges of the Supreme Court or some of them should not be sitting as a court of oyer and terminer in the county. The said judges also composed the Orphans' Court.

By the Act of June 16, 1836, P. L. 784, entitled "An act relating to the jurisdictions and powers of courts," which was also prepared by the Commission appointed to revise the Civil Code, the jurisdictions of the several courts were fixed as follows:

Section 1. The Supreme Court of this Commonwealth shall have power to hear and determine all, and all manner of pleas, plaints and causes which shall be brought, or removed there from any other court of this Commonwealth, by virtue of any writ or process issued by the said court, or any judge thereof, for that purpose, in the manner now practiced and allowed, to examine and correct all, and all manner of errors of the justices, magistrates and courts of this Commonwealth, in the process, proceedings, judgments and decrees, as well in criminal as in civil pleas or proceedings, and thereupon, to reverse, modify or affirm such judgments and decrees, or proceedings, as the law doth or shall direct; and generally to minister justice to all persons, in all matters whatsoever, as fully and amply, to all intents and purposes, as the said court has heretofore had power to do under the constitution and laws of this Commonwealth; and the chief justice and assistant judges of the Supreme Court, in lieu of the thirty shillings per day for traveling expenses, given by the act of the thirteenth April, seventeen hundred and ninety-one, shall respectively be entitled to receive the sum of four dollars per day, whilst engaged in holding court, or traveling to or returning from the same, and shall have power, and is required to issue execution, or other process, for the recovery of costs which have accrued, or may accrue in said Supreme Court, as well as in all cases which have been heretofore decided.

Section 11. The Supreme Court shall have original jurisdiction within the city and county of Philadelphia, in all civil actions, wherein the matter in controversy shall be of the value of five hundred dollars, or more.[1]

Section XII. The courts of common pleas shall have jurisdiction and power within their respective counties, to hear and determine all pleas, actions and suits, and causes, civil, personal, real and mixed, according to the constitution and laws of this Commonwealth; and the said court shall have power to grant, under their judicial seals, all lawful writs and process necessary for the exercise of such jurisdiction.

In the city and county of Philadelphia the jurisdiction of the Court of Common Pleas was limited to actions not exceeding $100, the district court having jurisdiction of actions for amounts exceeding that sum.

Section XIII. The Supreme Court, and the several courts of common pleas, shall have the jurisdiction and powers of a court of chancery, so far as relates to:

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[1]Section 9 of the Act of March 1, 1825, P. L. 41, repealed all laws vesting the Supreme Court with original jurisdiction of actions commenced in Philadelphia county. The above section restored this jurisdiction.

I. The perpetuation of testimony.

II. The obtaining of evidence from places not within the State.

III. The care of the persons and estates of those who are non compos mentis.

IV. The control, removal and discharge of trustees, and the appointment of trustees, and the settlement of their accounts.

V. The supervision and control of all corporations other than those of a municipal character, and unincorporated societies or associations and partnerships.

VI. The care of trust moneys and property, and other moneys and property made liable to the control of the said courts.

And in such other cases, as the said courts have heretofore possessed such jurisdiction and powers, under the constitution and laws of this Commonwealth.

And in every case in which any court, as aforesaid, shall exercise any of the powers of a court of chancery, the same shall be exercised according to the practice in equity prescribed or adopted by the Supreme Court of the United States, unless it be otherwise provided by act of assembly, or the same shall be altered by the Supreme Court of this Commonwealth by general rules and regulations, made and published as is hereinbefore provided; and the Supreme Court when sitting in banc, in the city of Philadelphia, and the court of common pleas for the said city and county shall, besides the powers and jurisdictions aforesaid, have the power and jurisdiction of courts of chancery, so far as relates to:

I. The supervision and control of partnerships and corporations, other than municipal corporations.

II. The care of trust moneys and property, and other moneys and property made liable to the control of the said courts.

III. The discovery of facts material to a just determination of issues, and other questions arising or depending in the said courts.

IV. The determination of rights to property or money claimed by two or more persons in the hands or possession of a person claiming no right of property therein.

V. The prevention or restraint of the commission or continuance of acts contrary to law, and prejudicial to the interests of the community, or the rights of individuals.

VI. The affording specific relief, when a recovery in damages would be an inadequate remedy: Provided, That in relation to the discovery of facts material to a just determination of issues, and other questions, the district court for the city and county of Philadelphia shall have the same power and authority, within its jurisdiction, as is hereby conferred on the court of common pleas for the said city and county: *And provided further,* That no process to be issued by the said courts of the city and county of Philadelphia, or the Supreme Court, sitting therein, under the chancery powers herein specially granted, excepting such as have heretofore been exercised, shall at any time be executed beyond the limits of the city and county aforesaid.

Section XIV. The courts of oyer and terminer and general jail-delivery shall have power:

I. To inquire by the oaths and affirmations of good and lawful men of the county, of all crimes committed, or triable in such county.

II. To hear, determine and punish the same, and to deliver the jails of such county of all prisoners therein, according to law.

III. To try indictments found in the quarter sessions, certified by the said court, according to law.

Section XV. The said courts shall have exclusive jurisdiction and power to try and punish all persons charged with any of the crimes herein enumerated, which shall be committed within the respective county, to-wit:

I. All persons charged with any murder, manslaughter or other homicide, and all persons charged with being accessory to any such crime.

II. All persons charged with treason against this Commonwealth.

III. All persons charged with sodomy, buggery, rape or robbery, their counsellors, aiders, comforters and abettors.

IV. All persons charged with arson, or with the crime of voluntary and maliciously burning any building, or other thing made punishable in the same manner as arson.

V. All persons charged with mayhem, or with the crime of cutting out or disabling the tongue, putting out an eye, slitting the nose, cutting off the nose, cutting off a lip, cutting off or disabling any limb or member of another person, by lying in wait, or with malice aforethought, and with intention in so doing to maim or disfigure such person, and their aiders, abettors and counsellors.

VI. All persons charged with burglary.

VII. Every woman who shall be charged with having endeavored privately, either by herself or the procurement of others, to conceal the death of any issue of her body, male or female, which, if it were born alive, would by the law be a bastard, so that it may not be known whether such issue was born dead or alive, or whether it were murdered or not.

VIII. All persons charged with the second or any subsequent offence of receiving, harboring or concealing any robber, burglar, felon or thief, or with the crime of receiving or buying any goods or chattels, which shall have been feloniously taken or stolen, knowing the same to be stolen.

Section XVI. The courts of quarter sessions of the peace, shall have jurisdiction and power within their respective counties.

I. To inquire by the oaths or affirmations of good and lawful men of the county, of all crimes, misdemeanors and offences whatever, against the laws of this Commonwealth, which shall be triable in the respective county.

II. To inquire of, hear, determine and punish, in due form of law, all such crimes, misdemeanors and offences, whereof exclusive jurisdiction is not given, as aforesaid, to the courts of oyer and terminer of such county.

III. To take in the name of the Commonwealth, all manner of recognizances and obligations heretofore taken, and allowed to be taken by justices of the peace, and they shall certify such as shall be taken in relation to any crime not triable therein, to the next court of oyer and terminer, having power to take cognizance thereof.

IV. To continue or discharge the recognizances and obligations of persons bound to keep the peace, or to be of good behavior, taken as aforesaid, or certified into such court, by any justice of the peace of such county, and to inquire of, hear and determine in the manner hitherto practiced and allowed, all complaints which shall be founded thereon.

V. The courts of quarter sessions shall also have jurisdiction in cases of fine, penalties or punishments imposed by any act of assembly for offences, misdemeanors or delinquencies, except where it shall be otherwise expressly provided and enacted: Provided, That nothing herein shall alter or affect the jurisdiction of any mayor's court: And provided also, That the mayor's court of the several cities of this Commonwealth shall have exclusive jurisdiction of all offences committed within the limits of their respective cities, which, by any existing law, or any law hereafter to be passed, are or shall be indictable in the court of quarter sessions of the proper county, unless by the terms of the law, expressly deprived of such jurisdiction.

VI. The said courts shall also have and exercise such other jurisdiction and powers, not herein enumerated, as may have been heretofore given to them by law.

Section XIX. The jurisdiction of the several orphans' courts shall extend to and embrace:

I. The appointment, control, removal and discharge of the guardians of minors, and the settlement of their accounts.

II. The removal and discharge of executors and administrators, deriving their authority from the register of the respective county, and the settlement of their accounts.

III. The distribution of the assets and surplusage of the estates of decedents, after such settlement among creditors and others interested.

IV. The sale of real estates of decedents.

V. The partition of the real estates of intestates among the heirs.

VI. The specific execution of contracts made by decedents, to sell and convey any real estate of which such decedent shall die seized.

VII. Proceedings for the recovery of legacies.

VIII. All cases within their respective counties, wherein executors, administrators, guardians or trustees may be possessed of, or are in any way accountable for, any real or personal estate of a decedent.

And such jurisdiction shall be exercised under the limitations and in the manner provided by law.

On the failure to impeach the judges of the Supreme Court in 1805, elsewhere referred to, the dominant party cried loudly for a convention to amend the constitution, so as to take away the life tenure of judges. While the Constitution of 1790 provided for amendments, it did not provide for the manner in which the same should be made, but petitions were widely circulated calling upon the legislature to call a convention for that purpose, and a Society of Friends of the People was formed for the purpose of securing such petitions. The friends of Governor McKean also formed a society calling themselves Constitutional Republicans, which petitioned against the calling of such a convention. The petitioners for a convention being somewhat less in number than those who petitioned against it, the legislature did nothing in the matter and referred it to the people. The question therefore was an issue in the gubernatorial election of 1805. The Friends of the People nominated Simon Snyder for governor, while the Constitutionalists renominated Thomas McKean. McKean was elected by a majority of 5,000 votes, although the normal Democratic majority was 30,000.

This settled the tenure of the judges for a number of years, but the matter was again brought up at the Constitutional Convention held in 1837. The instrument agreed upon by that body reduced the terms of the judges of the Supreme Court to fifteen years, the terms of the president judges of the courts of common pleas and other courts of record to ten years, and the terms of the associate judges of the courts of common pleas to five years, although this action was strenuously opposed by a minority of the convention. This constitution was ratified in 1838 by a vote of 113,971 against 112,759. Its provisions relative to the judiciary were as follows:

ARTICLE V.

Section 1. The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of oyer and terminer and general jail-delivery, in a court of common pleas, orphans' court, register's court, and a court of quarter sessions of the peace for each county, in justices of the peace, and in such other courts as the legislature may from time to time establish.

Section 2. The judges of the supreme court, of the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be nominated by the governor and, by and with the consent of the senate, appointed and commissioned by him. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well. The president judges of the several courts of common pleas, and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well. The associate judges of the courts of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves. But for any reasonable cause, which shall not be sufficient ground of impeachment, the governor may remove any of them on the address of two-thirds of each branch of the legislature. The judges of the supreme court and the presidents of the several courts of common pleas shall, at stated times, receive for their services an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit under this Commonwealth.

Section 3. Until otherwise directed by law, the courts of common pleas shall continue as at present established. Not more than five counties shall at any time be included in one judicial district organized for said courts.

Section 4. The jurisdiction of the supreme court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail-delivery, in the several counties.

Section 5. The judges of the court of common pleas in each county shall, by virtue of their offices, be justices of oyer and terminer and general jail-delivery, for the trial of capital and other offenders therein; any two of said judges, the president being one, shall be a quorum; but they shall not hold a court of oyer and terminer, or jail-delivery, in any

county, when the judges of the supreme court, or any of them, shall be sitting in the same county. The party accused, as well as the commonwealth, may, under such regulations as shall be prescribed by law, remove the indictment and proceedings, or a transcript thereof, into the supreme court.

Section 6. The supreme court, and the several courts of common pleas, shall, beside the powers heretofore usually exercised by them, have the powers of a court of chancery, so far as relates to the perpetuating of testimony, the obtaining of evidence from places not within the State, and the care of the persons and estates of those who are *non compotes mentis*. And the legislature shall vest in the said courts such other powers to grant relief in equity as shall be found necessary; and may, from time to time, enlarge or diminish those powers, or vest them in such other courts as they shall judge proper, for the due administration of justice.

Section 7. The judges of the court of common pleas of each county, any two of whom shall be a quorum, shall compose the court of quarter sessions of the peace, and orphans' court thereof; and the register of wills, together with the said judges, or any two of them, shall compose the register's court of each county.

Section 8. The judges of the courts of common pleas shall, within their respective counties, have like powers with the judges of the supreme court, to issue writs of certiorari to the justices of the peace, and to cause their proceedings to be brought before them, and the like right and justice to be done.

Section 9. The president of the court in each circuit within such circuit, and the judges of the court of common pleas within their respective counties, shall be justices of the peace, so far as relates to criminal matters.

Section 10. A register's office, for the probate of wills and granting letters of administration, and an office for the recording of deeds, shall be kept in each county.

Section 11. The style of all process shall be "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

An attempt was made in the Constitutional Convention of 1837 to make the Judiciary elective. This was opposed by the conservative members of the convention and very generally by the bench and bar of the Commonwealth, and the measure was defeated. Popular sentiment, however, was in favor of an elective judiciary, and the same was established by an amendment to Article V of the Constitution adopted in 1850, which was as follows:

Art. V. Sec. 2. The judges of the Supreme Court, of the several courts of common pleas, and of such other courts of record as are or shall be established by law, shall be elected by the qualified electors of the commonwealth in the manner following, to wit: The judges of the supreme court, by the qualified electors of the commonwealth at large; the president judges of the several courts of common pleas and of such

other courts of record as are or shall be established by law, and all other judges required to be learned in the law, by the qualified electors of the respective districts over which they are to preside or act as judges; and the associate judges of the courts of common pleas, by the qualified electors of the counties respectively. The judges of the supreme court shall hold their offices for the term of fifteen years, if they shall so long behave themselves well, (subject to the allotment hereinafter provided for, subsequent to the first election); the president judges of the several courts of common pleas, and of such other courts of record as are or shall be established by law, and all other judges required to be learned in the law, shall hold their offices for the term of ten years, if they shall so long behave themselves well; the associate judges of the courts of common pleas shall hold their offices for the term of five years, if they shall so long behave themselves well: all of whom shall be commissioned by the governor, but for any reasonable cause, which shall not be sufficient grounds of impeachment, the governor shall remove any of them on the address of two-thirds of each branch of the legislature. The first election shall take place at the general election of this Commonwealth next after the adoption of this amendment, and the commissions of all the judges who may be then in office shall expire on the first Monday of December following, when the terms of the new judges shall commence. The persons who shall then be elected judges of the supreme court shall hold their offices as follows: One of them for three years, one for six years, one for nine years, one for twelve years, and one for fifteen years, the term of each to be decided by lot by the said judges as soon after the election as convenient, and the result certified by them to the governor, that the commissions may be issued in accordance thereto. The judge whose commission will first expire shall be chief justice during his term, and thereafter each judge whose commission shall first expire shall in turn be the chief justice, and if two or more commissions shall expire on the same day, the judges holding them shall decide by lot which shall be the chief justice. Any vacancies happening by death, resignation, or otherwise, in any of the said courts shall be filled by appointment by the governor, to continue till the first Monday of December succeeding the next general election. The judges of the supreme court and the presidents of the several courts of common pleas shall at stated times receive for their service an adequate compensation, to be fixed by law, which shall not be diminished during their continuance in office, but they shall receive no fees or perquisites of office, nor hold any other office of profit under this commonwealth, or under the Government of the United States, or any other State of this Union. The judges of the supreme court during their continuance in office shall reside within this commonwealth, and the other judges during their continuance in office shall reside within the district or county for which they were respectively elected.

CHAPTER XLI.

CHIEF JUSTICE GIBSON.

JOHN BANNISTER GIBSON

CHAPTER XLI.

Chief Justice Gibson.

John Bannister Gibson, the fourth Chief Justice of Pennsylvania, was born at Westover Mill, Cumberland county, now Perry county, on November 8, 1780. His grandfather, George Gibson, kept a tavern near the present site of the city of Lancaster as early as 1730. This ancestor had two sons, John and George, the latter the father of the Chief Justice. George Gibson removed to Silver Springs, Cumberland county, in 1770, where he became the owner of the Silver Spring Mill. Silver Spring is located on the Harrisburg and Carlisle pike, eight miles west of Harrisburg. He was engaged in the French and Indian wars, and also in the Revolution, attaining the rank of colonel in the latter war. He moved his home from Silver Spring in 1773 to Westover Mill, in what is now Perry county, located on Sherman's creek, which empties into the Susquehanna at Duncannon. At this place he died in 1791, leaving four sons, of whom John Bannister was the third in time of birth. The Gibson homestead is not far distant from Sterrett's Gap in the Blue Mountains to the northward from Carlisle. The property consisted in Gibson's time of about seventy-eight acres, including the mill on Sherman's creek, a log structure, with only one run of stones.

In a letter written by Judge Gibson to a friend on July 9, 1851, he gives the following particulars regarding his maternal ancestry:

You ask about my maternal relations. My mother was Anne, daughter of Francis West, a substantial freeholder, descended from an Irish branch of the Delaware family, probably before it was ennobled. The peerage is an English, and I believe an existing one. My maternal grandmother was a Wynne. Owen Wynne, the head of the family, is or lately was, the first commoner in Ireland, and refused a peerage. Through the Wynnes, we are connected with the Coles of Enniskellen. Another connection, not so reputable, was the famous Colonel Barre, the associate of Wilkes in his politics and his vices.

My mother was born at Clover Hill, near Sligo, in 1744, and came with the family to this country about 1755. She died on the 9th of February, 1809. I believe her father had been a Trinity College boy, for he spoke Latin after the fashion of his day. . . . I was born among the mountains of Cumberland. Fox hunting, fishing, gunning, rifle shooting, swimming, wrestling and boxing with the natives of my age were my exercises and my amusements. My mother, who, having been educated in Philadelphia, was qualified for the task, directed my reading, and put such books into my hands as were proper for me. We had from one to two hundred volumes, Burke's Annual Register included, and I read all of

them so often that they are as fresh in my memory as if I had read them yesterday. My poor mother struggled with poverty during the nineteen years she lived after my father's death, and having fought up gallantly against it, till she had placed me at the bar—died. She was certainly a noble soul, but the little talent of the family came from my father's side; I should say genius, for he had no talent at all. He was celebrated as a humorist, and even a wit, but though without a positive vice, he never could advance his fortune, except in the army, for which alone he was qualified.

Judge Gibson derived his name Bannister from Colonel John Banister, a member of the Continental Congress, a signer of the Articles of Confederation, and an officer in the Virginia line during the Revolution, who it seems was known to Colonel Gibson. The chief justice wrote the name with one "n" in his early days, and though he afterwards wrote it with two, the former is the proper spelling.

Although Mrs. Gibson was left with scanty means of subsistence, she gave her sons a sufficient elementary education. John Bannister attended Dickinson College at Carlisle in 1795 or 1796, and is believed to have graduated in 1800, but of this there is some doubt. The records of the college at this time having been destroyed by fire, it is impossible to determine the fact. On the completion of his collegiate course he was entered as a student of law in the office of Thomas Duncan, of Carlisle, who afterwards occupied with him a seat on the bench of the Supreme Court. Referring to the bar of the Commonwealth at that time, Judge Porter in his "Essay on Gibson," written in 1856, says:

In that day the learning of the profession was confined mainly to special pleading and real estate. The former attracted the attention of students by its utility in practice, by the profound and intricate nature of its principles, and by the satisfaction which, when mastered, it imparts to the mind. The doctrines of real estate were investigated with care, because in the state of the country, the settlement of titles to land necessarily formed the bulk of every lawyer's business. Of commercial law, we had next to none. No bank had then been chartered by the State to do business exclusively out of the city of Philadelphia, and that city had but three banks within its limits. Partnership, negotiable paper, and insurance were terms whose import differed widely from their import now. The carrying trade of the country was done mainly in the "Conestoga wagon," and as this required in each case, but one wagon and one set of horses and harness, the time had not arrived for that union of capital and labor so essential to the success of large commercial enterprises. Where credit was small, and labor was paid for in cash, or by an exchange of commodities, negotiable instruments were comparatively unnecessary. So little were insurances known out of Philadelphia, that according to the recollection of persons now [1855] living, when a bill was introduced into the legislature to incorporate the first life insurance of the State, it was scouted and rejected as a vain effort, if not to affect by pecuniary considerations the length of human life, at least to trifle with that which belongs to the dominion of a Higher Power. In the absence of the usual subjects of commercial decision, we could have little commercial law. The juris-

prudence of England, though some centuries older, exhibited almost equal dearth. Lord Holt had here and there laid a foundation stone in such cases as Coggs vs. Bernard, 3 Salkeld II, on the liability of common carriers, and these had been improved by Lord Mansfield in many such cases as Heylyn vs. Adamson, 2 Burrows, 669, on the steps necessary to fix an endorser, and by Lord Loughborough in such others as Lickbarrow vs. Mason, I. H. Blackstone, 357, on the right of stoppage in transitu. But all that had been done will be found to bear feeble comparison with the generous contributions which have since been made to that department of legal science. In this branch, therefore, we must suppose that neither preceptor nor pupil had made any considerable attainments in the outset of his career. I think it might be shown by citations from his opinions, that Judge Duncan's taste inclined more strongly to special pleading than to real estate, and that his accuracy in that department was greater than in the law of property. We shall see that his pupil acquired eminence in the entire three branches; certainly in our Pennsylvania land law; while of our mercantile law, he must be regarded as a chief architect.

Gibson was admitted to the bar of Cumberland county on March 8, 1803, and entered on the practice of the law in Carlisle. He afterwards removed to Beaver, Pennsylvania, and thence to Hagerstown, Maryland, but after two years and a few months he returned to Carlisle, and continued in the practice of his profession there and in adjoining counties until he was appointed to the Bench.

In 1810 he was elected to the House of Representatives of the Commonwealth by the Democratic party of Cumberland county, and served during the sessions of 1810-11 and 1811-12. During the latter session he was chairman of the committee on the judiciary. He filed a written protest against the address presented to Governor Snyder for the removal of Judge Cooper in 1811, only three other members of the House joining with him in his dissent. He afterwards became an intimate friend of Judge Cooper and wrote a sketch of his life on the death of the latter in 1840, which was published in the "Encyclopedia Americana."

During his service in the House he secured the passage of an act to abolish the right of joint tenants to take by survivorship and to make real estate held in joint tenancy divisible. He also was active in securing the passage of legislation for the establishment of a system of internal improvement.

On the 16th of July, 1813, Gibson was appointed president judge of the Eleventh Judicial District, composed of the Counties of Tioga, Bradford, Susquehanna and Luzerne, in which position he served somewhat less than three years. Little is known of his services in this position. He is said to have exhibited much energy in the transaction of business, but to have been too impulsive in his judgments. He seems, however, to have attracted the attention of the leaders of the bar throughout the Commonwealth, and his opinions were held in high consideration by them.

While serving as president judge of the Eleventh Judicial District, Gibson resided at Wilkes-Barre, and the following account of him during his residence in that place is taken from an issue of the Wilkes-Barre "Record of the Times" in May, 1853:

His residence was on Northampton, between Franklin and Main streets, recently occupied by Dr. Wright. Naturally affable and easy of access, he united in manners the familiar courtesy of the gentleman with the appropriate dignity of his judicial station. Hence he became a general favorite, while his patience to hear, his talent (without seeming to hurry) to accelerate business, his fairness and promptitude to decide, soon commanded universal confidence.

In the hours of relaxation from the exercise of official duties, and his law and literary reading, he seemed to take especial pleasure in company with his scientific friend, the late Jacob Cist, visiting different portions of the valley, note its geological structure, particularly the extent and position of the anthracite coal deposit, then, from the praiseworthy experiment of Judge Fell and its fortunate result, just beginning to emerge into importance; and also, with more than common curiosity and delight to visit the ancient Indian fortifications. In one of their excursions to examine the large fort on the plantation of Mr. James Hancock, they found a medal of King George the First, which, owing to their care, is yet happily preserved.

As a Mason, he entered into the spirit of the society, found pleasure in attending its communications, for he met there numbers of intelligent citizens, whose localities and various pursuits could hardly have brought them elsewhere together; and we think for a year or two his honor presided as master of the lodge, "as many a worthy brother has done before him."

When called to the supreme bench, his departure was regarded with emotions of mingled pleasure and regret. All were glad at the occurrence of an event so propitious to him personally, and promising increased utility to that elevated tribunal; yet all were sorry to part with him, as a judge or as a citizen. His wife was a Miss Galbraith, and during his residence, the visits of her sisters and other female friends added to the social charms in the village, less populous and far more secluded from the busy world than now.

On June 27, 1816, he was appointed by Governor Snyder as associate justice of the Supreme Court to succeed Hugh Henry Brackenridge, deceased. At the time of his appointment, there were but three judges on the Supreme Bench, but by the Act of April 8, 1826, P. L. 268, the number of judges was increased to five, and Moulton C. Rodgers and Charles Houston were commissioned to the new judgeships. On Monday, April 30, 1827, Chief Justice Tilghman died, and Gibson was commissioned as chief justice on the 18th day of May, 1827, his place as an associate justice being filled by the appointment of John Tod. Speaking of him at this time, Judge Porter in his "Essay on Gibson" says:

The powers of the new chief justice seem to have caught a fresh impulse from the eminence to which they had conducted him. Even then his style was no mean vehicle of judicial thought; but it soon acquired infinitely more massiveness, compactness and polish. His original style, compared to that in which he now began to write, was like the sinews of a growing lad compared to the full-knit muscles of a man. No one who has carefully studied his productions can have failed to have remarked the

increased power and pith which distinguished them from this time forward. The gradual and uniform progress of his mind may be traced in his opinions, with a certainty and satisfaction which are probably not afforded in the case of any other judge known to our annals.

When he first came on the bench, wrote his successor, Chief Justice Black, he was scarcely prepared for his mission. Those who came with him and after him, were as thoroughly furnished as they could be for the work they had to do. But when his powers unfolded themselves, all saw so plainly that no man who sat with him afterwards could pretend to be his equal, without becoming ridiculous. Competition gave up the contest, and rivalry itself conceded to him an undisputed pre-eminence. In saying this, we hope we are free from the slightest disposition to depreciate his associates. Most of them have fairly earned a high character and are justly entitled to their share of distinction. We detract nothing from them when we give his dues to him. They had their virtues and their talents, but when we say that he was their chief, we mean the word in a sense which can never be applied so fitly to another.

> "He, above all the rest,
> In shape and gesture proudly eminent,
> Stood like a tower."

In 1828 he was elected at the head of the electoral ticket for Pennsylvania, and with the rest of the electors voted for General Jackson for the presidency.

Judge Gibson's brother George, who was commissary-general of the United States army, was an intimate friend of President Jackson, and it is said that Jackson admired the chief justice so much that he would have appointed him Chief Justice of the United States, after the death of Marshall, instead of Taney, but for certain insurmountable political reasons.

The Constitution of 1838 reduced the terms of justices of the Supreme Court from life to fifteen years, and the sixth section of the schedule annexed to that instrument provided that the commissions of the judges in office on the first day of January should expire in the following manner, the commission bearing the earliest date to expire on the first day of January, 1842, the commission next dated to expire on the first day of January, 1845, and so on. Gibson's commission, bearing the earliest date, would therefore have expired on the first day of January, 1842, but he resigned on November 19, 1838, and was reappointed by Governor Ritner, so that but for the amendment of 1850 to the Constitution of 1838, which provided for the election of all judges, he would have served as chief justice until January 1st, 1854. He was severely criticized for this action, and even his eulogist Judge Porter states that the act was a mistake and an accident to his fame. In defence of his resignation and reappointment he wrote to a friend on December 13, 1838, as follows:

To me, who, for a bare subsistence, had given the flower of my life to the public, instead of my dependent family, a continuance in office of the longest period was a matter of vital importance; but the arrangement of the convention, unintentionally severe to me or any one else, proposed

to consign me to penury and want, at a time of life when I could scarcely expect to establish myself in practice, which, under the most favorable circumstances, requires several years. This was known to my brethren, and felt by them as men. The measure, since carried into execution, was proposed by one of them on the western circuit, and with the assent of another, whose term would be shortened by it. The assent of the other, who stood in the same predicament, was cordially given, as soon as it was mentioned to him. Feeling, then, that the personal interest of no one else was concerned; that it was an arrangement which contravened no principle of public duty; and that if any objection lay to it on the ground of public expediency, it would be enforced by the constitutional arbiter, I permitted a personal friend, with whom I have never coincided in party sentiment, to submit it to the Executive for his sanction or rejection.

No condition, express or implied, was attached to the appointment, nor was it hinted that anything was expected. What could I do for the governor or his friends? Personally I had nothing to offer, for my early retirement from the political arena had left me without influence, and officially I had still less. . . .

Had the convention intended that the amendments should fix the destinies of the individuals before the system should go into operation, it would have said so in terms instead of saying the contrary. But no such thing was proposed even in debate. Instead of specifying the day of final adjournment as the criterion, which would have been done had the intent been to fix those destinies as of that day, the amendments were left to fix them expressly as of a day not yet come. Is it not clear, then, that the convention did not mean to concern itself about changes in the meantime? Forbid them, it certainly did not. It was sufficient for the system, without regard to the individual, that the commission of a judge would expire every three years, a result that must as certainly follow, notwithstanding the change of place betwixt the judges, as if no such change had been. made. That the convention meant not to discriminate on the score of years of vigor is manifest from the actual application of their principles, by which the youngest in years was to go out first; and betwixt myself and my brethren who are to be affected by my re-appointment, the difference in that respect is that one of them is six years my senior and the other one year my junior.

We think that these arguments are unanswerable, and are unable at this distance of time to see any impropriety whatever in his resignation and reappointment.

By the amendment of 1850 to the Constitution of 1838, it was provided that the judiciary should be elective, and that new judges should be elected at the next general election. The persons to be elected judges of the Supreme Court were to hold their offices, one for the term of three years, one for six years, one for nine years, one for twelve years, and one for fifteen years, the term of each to be determined by lots to be drawn by the judges. The judge whose commission was to first expire was to be chief justice during his term, and thereafter each judge whose commission should first expire should in turn be the chief justice during the remainder of his term. At a convention of the Democratic Party assem-

bled at Harrisburg on June 11, 1851, Jeremiah S. Black, Ellis Lewis, John Bannister Gibson, Walter H. Lowrie and Richard Coulter were nominated for justices of the Supreme Court and elected at the following general election held on October 14, 1851. Judge Gibson had always been actively opposed to an elective judiciary. Although he was a Democrat, he had not been active in party affairs for so long that it would seem that he was hardly considered as belonging to that party. He did nothing to secure his nomination, which was obtained by a majority of two votes, principally through the efforts of Judge Porter and Ulysses Mercur, afterwards Chief Justice.

On the reorganization of the Supreme Court after the election, Judge Black drew the shortest term and therefore became chief justice, thus remitting Gibson to an associate justiceship. In this capacity he served until his death on May 3, 1853. Of his services after he became an associate justice, Judge Porter speaks as follows:

On assuming his seat as an associate justice after his election in 1851 he appeared to take much less interest than formerly in the proceedings of the court, and much less part in its business. He seemed like a noble bird that had been by some unexpected event thrown into a strange flock, which, whether better or worse, were not his old associates, but, of necessity, widely different and belonging almost to a different age. When occupying his seat on the bench, there was a look of abstraction, which told that his thoughts dealt more with the past than with the present. The powers of his mind however had lost nothing of their ancient vigor. When he wrote at all, he wrote like himself. During the sessions of the court in the country he occupied the bench with his brethren, and delivered an occasional opinion. In Philadelphia he seemed to prefer to hold the Court of Nisi Prius, for this caused him less labor after the usual court hours. In this mode, for the most part, he performed his duties until the occurrence of that last change, which I am to record further on in the narrative. . . .

Judge Gibson was married to Sarah Work Galbraith, at the home of the latter's mother, Mrs. Barbara Galbraith in Carlisle, on October 8, 1812. His wife's father, Colonel Andrew Galbraith, came from an excellent family, he and one or more of his brothers having been officers during the Revolution. They had eight children, several of whom died in infancy. Two of his sons, John Bannister Gibson (2nd), and George were officers in the Regular Army.

Mrs. Gibson is described as a remarkably beautiful woman, slightly over medium height, with a lithe and slender figure. Although delicate in appearance she enjoyed excellent health, and had a buoyant disposition. She was a notable housewife, and entered with a zest into everything that concerned her husband's welfare.

Judge Gibson was of commanding presence, being six feet three inches in height, and well-proportioned. His head was remarkably large, being twenty-four and one-fourth inches in circumference; Daniel Webster's, the size of which is often referred to, was but twenty-four inches.

It appears that at a banquet in Boston which was attended both by Gibson and Webster, the two accidentally exchanged hats and did not notice the exchange for some time.

In middle life his face is said to have been eminently handsome. Later it was strong rather than handsome, but preserved a remarkably fine complexion. Although he had a full head of gray hair, he was accustomed to shave his head and wear a wig. It appears that he did this for the reason that when he was hard at work his head became heated to an uncomfortable degree. Usually when alone within doors he took his wig off, never making any pretense to secrecy in regard to it. He remarked that he considered hair as simply an overcoat for the head, and would not be bothered with a garment that he could not remove at will.

He was not successful in the acquisition of money. His highest salary was but two thousand dollars per annum, with per diem expenses in addition, making his entire annual compensation but about two thousand five hundred dollars. At his decease his estate amounted to possibly thirty thousand dollars. His investments were principally in railroad stocks from the dividends of which he increased his holdings from time to time. An amusing anecdote is told by Mr. Roberts in his "Memoirs of John Bannister Gibson" relative to an investment made by Gibson. It appears that on one occasion General Robinson, of Allegheny City, gave a dinner party to Gibson and Judge Rodgers, at which one of the judges remarked that owing to their migratory life they seldom saw opportunities to make extremely profitable investments. Robinson replied that there was a lot in Allegheny City, opposite his house, which was for sale, and suggested the purchase of it, whereupon Gibson and Rodgers bought it for five thousand dollars. Unfortunately a flood from the Allegheny river covered it several feet deep shortly afterwards, and the tenants demanded and obtained a reduction of rent. The rest of Allegheny City appreciated in value, but this lot did not, and Judge Gibson's heirs finally obtained for his share the precise amount of his original investment. Mr. Roberts' comment is as follows: "This only goes to prove that the successful man cannot impart the rules of his success to others. If General Robinson had bought this property, either the flood would not have come, or he would have sold it for a shipyard or a swimming school, and rents would therefore not have declined."

On his elevation to the Supreme Bench in 1816, he moved his family to Carlisle. About the year 1820 he purchased a large brick mansion on East Main street in that borough, which remained his home until his death, and his widow resided there until her decease on January 25, 1861.

He was an extremely versatile man. He played unusually well for an amateur upon the violin. It is said that he would frequently cease work upon an opinion, and while improvising upon the violin continue his meditations on the legal point under consideration, and when that was definitely formulated, as suddenly lay his instrument aside and return to his writing. He was also a skillful piano tuner. He had considerable

artistic ability, and a small portrait of him, painted by himself, when at about the age of twenty-one or twenty-two, was presented to the Allegheny County Law Library many years ago. This portrait is said to possess very considerable merit. He was particularly clever in making rapid pen and ink sketches, and sometimes amused his brethren on the bench with caricatures of some tiresome speaker in his most habitual or characteristic attitude. It is needless to say that this talent was not exercised in an unkind or malicious manner.

He had a certain talent for elegiac compositions, and was the author of a number of striking epitaphs. The best known of these is the epitaph of the father of Joseph Jefferson upon his tomb in the Harrisburg Cemetery, which reads as follows:

Beneath this marble
are deposited the ashes of
Joseph Jefferson,
an actor whose unrivaled powers
took in the whole range of comic character,
from pathos to soul-shaking mirth.
His coloring of the part was that of nature, warm, pure and fresh;
but of nature enriched with the finest conceptions of genius.
He was a member of the Chestnut street theatre,
Philadelphia, in its most high and palmy days,
and the compeer
of Cooper, Wood, Warren, Francis,
and a long list of worthies,
who, like himself,
are remembered with admiration and praise.
He was a native of England.
With an unblemished reputation as a man,
he closed a career of professional success,
in calamity and affliction,
at this place,
in the year 1832.
"I knew him, Horatio; a fellow of infinite jest, and
most excellent fancy."

This epitaph is graved on a tomb erected by Judges Gibson and Rodgers in 1843, eleven years after the death of Jefferson. Referring to the erection of the monument, Judge Porter says: "Men may differ about the propriety of erecting a monument to the memory of Mr. Jefferson, but I should be glad to know whether any man would have done it, but one who had strong sympathies with human nature." This shows the marked change in the attitude towards the stage which has occurred since Judge Porter wrote in 1855. It is thought that there can nowadays be no difference of opinion about the propriety of erecting a monument to the memory of a gifted actor.

Like most young men, he wooed the Muses in his early days, and even in after years, but the specimens of his poetry which have survived do not indicate great poetic talent.

With reference to Gibson's manner of reaching his conclusions and writing his opinions, Judge Porter writes as follows:

It is believed that he took little part in the consultations of the bench, communicating his views usually in short, detached sentences, sometimes not at all, but when he did, hitting the exact point, and diffusing additional light on the principles in question. When appointed to deliver the opinion, he generally made an examination of the authorities, and sometimes, it must be admitted, much too brief an examination. His habit then was to think chiefly without the aid of his pen, and out of the reach of books. He did this in his chamber, on the street, at the table; sometimes, it is feared, on the bench, during the progress of other causes, and not infrequently in the public room of the hotel. Persons who approached him on these occasions were struck with and sometimes offended at, his abstracted and careless air. To those who knew what he was doing, he frequently complained of his difficulty in determining on what principles to pitch the cause, without mentioning it particularly. He did all the labor of thought before he commenced to write, and he never wrote until he was ready. Before he began, it is believed, the very sentences were formed in his mind, and when he assumed the pen, he rarely laid it aside until the opinion had been completed. The bold, beautiful, and legible character of his hand-writing, and its freedom from erasure, induced those obliged to read his opinions in manuscript, to suppose that he transcribed them, but this was very rarely, if ever done; he had too little time, and too much horror of the pen, to attempt it. Such a method of writing undoubtedly possessed great advantages. It gave his fine logical powers full play. It contributed to that condensation which forms one of the distinctive features of his writings. It enabled him to proceed with directness right to his conclusion, and to make everything point to it from the first sentence to the last. No repetition occurs. We see each idea but once, and need not count on seeing even the shadow of it, more than once. Having always something to do ahead, the pen spent no more time on the thought in hand than was necessary to complete it. He knew precisely where he was to end before beginning, and he avoided all the difficulties of those writers who begin to write when they begin to think, and sometimes before it, and who produce works resembling, for the most part, the patch-work emblazoned on the best beds of German housekeepers, and giving evidence not to be mistaken, of the exact places at which they have been joined, and of the diverse and heterogeneous materials out of which they have been composed. The most casual reader of Judge Gibson's opinions must have observed how seldom he professes to give any history of the decided cases, from the creation of the world, from the reign of Richard I, or from the assumption of the reins of justice by Chief Justice McKean; and how invariably he puts the decision upon some leading principle of the law, referring but to a few cases for the purpose of illustration, or to show their exception to the general rule, and how all this is done with the ease and skill which betokens the hand of a master. . . .

"Any memoir of Judge Gibson," says Judge Porter, in his essay on the Chief Justice, "would be incomplete without some notice of his agency in settling the law of Pennsylvania on the subject of riots." He continues:

The people of the State, and perhaps of the Union, will not soon forget the popular commotions which prevailed in Philadelphia between the years 1836 and 1846. We had the abolition riots, railroad riots, the negro riots, the weavers' riots, and the Native American riots.

Having run short of names, territorial designations were adopted, and we had the Moyamensing, Southwark and Kensington riots. Interspersed with these were the riots of various fire companies, who seemed to have achieved little distinction until their members had been bound over to each successive term of the quarter sessions. Learned jurists were at work in the meantime. It was easily shown that this disorder was all wrong; that the power to suppress it must exist somewhere; that the sheriff could employ both civil and military power; that all citizens were bound to obey his requisition; that peaceable citizens were more numerous than the disorderly; that the riots could therefore be put down, and must be put down. Editors, lawyers, judges and philosophers, all agreed in opinion, and resolved that there must be no more riots. This was very well, but the riots continued. Good citizens ascertained that if they disobeyed the sheriff's summons they would be fined, and if they complied with it their heads would be broken, and with strange contempt for the law, and unaccountable forgetfulness of their civil duties, they preferred to encounter the fine. The sheriff therefore went to the attack with men the value of whose assistance may be estimated in proportion to the price they placed on their own heads, and to whom any attempt to test the thickness of their skulls was of small consequence, provided they received compensation for turning out. The writer of these pages saw but one of those bodies of men so famous in legal treatises under the title of *posse,* and he hopes to be excused for his want of taste in not desiring to see another. The description of Falstaff's regiment renders any account of it unnecessary. Their conduct was what every one but a writer of disquisitions could have predicted. At the first discharge of arms by the mob they left the commanding officer with five men out of three hundred. The military were next thought of; but when the military arrived, the mob was not there; and when the military had dispersed, the mob, by a singular coincidence, again convened. Thus every theoretical means existed that could have been desired to effect the end, and the practical means were absent to a degree that made all efforts of the kind simply contemptible. In the meantime the character of our city had suffered immensely. Accounts of the disturbances, bad enough if not exaggerated, had been extensively published, both at home and abroad, and one of the most peaceful and peace-loving communities in this sisterhood of States had begun to be known as the city of riots. The commotions of 1844 filled up the measure of our shame. Two churches, a school house, and numerous private dwellings were reduced to ashes. All men felt that the time had come when the law must do something, if it could do anything. Inferior tribunals quailed before the mob spirit, and the mass of the rioters arrested were acquitted and discharged. An opportunity now presented itself to the chief justice to display his powers. The Act of 31st May, 1841, founded on that of George I, authorized the owners of property in the county of Philadelphia, destroyed by this species of violence, to bring suits against the county for the injuries sustained, and numerous suits were brought under the authority of the act. The case of Donoghue vs. The County,

was the first on the list, and the chief justice held the court. His charge was worthy of the man, and of the occasion. No one who heard it can forget its influence on the case, on the subsequent cases, and on the community. One of the chief defences set up, that armed men had fired on the crowd from the building afterwards burned, was demolished with a boldness, an energy, and an eloquence rarely surpassed in judicial proceedings. He disregarded utterly the distinction which had been taken between defending a dwelling house and a church, and held that a man has the same right to defend and to take life in defence of the place in which he worships God, as of the domicile which shelters his family. He carried the doctrine even further, and applied it to the school contiguous to the church, in which the children were receiving their education. In the meagre scrap of the charge which is reported in 2 Barr, 231, this is sufficiently evident. The result was a verdict in favor of the plaintiff for the whole amount of the property destroyed. A similar result followed in the case of the Hermits of St. Augustine vs. The County, Brightly's Reports, 116, and in that of the St. Michael's Church vs. The County, Brightly's Reports, 121. Of a different verdict in the first case, on that turning point between the dominion of law and the dominion of violence, no man could have ventured to predict the result. From that time to this we have had no riots. Other causes have contributed to produce this state of things; but no one act tended more directly to restore permanent good order and to re-establish popular confidence in the people themselves, than the manly and patriotic course of Judge Gibson in the case of Donoghue vs. The County. Business men began to feel that if they were certainly liable to pay their own proportion of the property thus destroyed, it was their pecuniary interest to require its preservation. Lawless men found that they inflicted no injury on the objects of their violence when the property destroyed was paid for at its highest value. Patriotic men, both at home and abroad, were glad to discover in these proceedings fresh evidence of the power which a wise and benignant system of laws administered by an enlightened judge may exert among a free people . . .

Judge Gibson died in the United States Hotel in Philadelphia, on Chestnut street, on May 3, 1853, having been in failing health for more than a year before his decease. His remains were buried at Carlisle. The epitaph from the pen of Chief Justice Black which appears on his monument is given on the opposite page of this work.

JOHN BANNISTER GIBSON, LL.D.,
For Many Years
Chief Justice of Pennsylvania.
Born November 8th, 1780.
Died May 3d, 1853
In The Various Knowledge
Which Forms The Perfect Scholar
He Had No Superior.
Independent, Upright And Able
He Had All The Highest Qualities
Of A Great Judge.
In The Difficult Science of Jurisprudence
He Mastered Every Department,
Discussed Almost Every Question, And
Touched No Subject Which He Did Not Adorn.

He Won In Early Manhood
And Retained To The Close Of His Long Life
The Affection Of His Brethren On The Bench,
And Respect Of The Bar,
And The Confidence Of The People.

His Intimate Friends
Forgot The Fame Of His Judicial Career
In The More Cherished Recollections
Of His Social Character,
And His Bereaved Family
Dedicate This Stone
To The Perpetual Memory
Of
The Affectionate Husband
And
The Kind Father.

The following is taken from the eulogy of Gibson delivered by Chief Justice Black in the Supreme Court on May 9, 1853:

We regarded him more as a father than a brother. None of us ever saw the Supreme Court before he was in it; and to some of us his character as a great judge was familiar even in childhood. The earliest knowledge of the law we had was derived in part from his luminous expositions of it. He was a judge of the common pleas before the youngest of us was born, and was a member of this court long before the oldest was admitted to the bar. He sat here with twenty-six different associates, of whom eighteen preceded him to the grave. For nearly a quarter of a century he was Chief Justice, and when he was nominally superseded by another, as the head of the court, his great learning, venerable character, and over-shadowing reputation, still made him the only chief whom the hearts of the people would know. During the long period of his judicial labors he discussed and decided innumerable questions. His opinions are found in no less than seventy volumes of the regular reports, from 2 Sergeant & Rawle to 7 Harris.

At the time of his death he had been longer in office than any cotemporary judge in the world; and in some points of character he had not his equal on the earth. Such vigor, clearness, and precision of thought were never before united with the same felicity of diction. Broughham has sketched Lord Stowell justly enough as the greatest judicial writer that England could boast of, for force and beauty of style. He selects a sentence and calls on the reader to admire the remarkable elegance of its structure. I believe that Judge Gibson never wrote an opinion in his life from which a passage might not be taken, stronger, as well as more graceful in its turn of expression, than this which is selected with so much care, by a most zealous friend, from all of Lord Stowell's.

The dignity, richness, and purity of his written opinions was by no means his highest title to admiration. The movements of his mind were as strong as they were graceful. His periods not only pleased the ear but sunk into the mind. He never wearied the reader, but he always exhausted the subject. An opinion of his was an unbroken chain of logic, from beginning to end. His argumentation was always characterized by great power, and sometimes it rose into irresistible energy, dashing opposition to pieces with force like that of a battering-ram.

He never missed the point even of a cause which had been badly argued. He separated the chaff from the wheat almost as soon as he got possession of it. The most complicated entanglement of fact and law would be reduced to harmony under his hands. His arrangement was so lucid, that the dullest mind could follow him with that intense pleasure which we feel in being able to comprehend the working of an intellect so manifestly superior.

His accomplishments were very extraordinary. He was born a musician, and the natural talent was highly cultivated. He was a *connoisseur* in painting and sculpture. The whole round of English literature was familiar to him. He was at home among the ancient classics. He had a perfectly clear perception of all the great truths of natural science. He had studied medicine carefully in his youth and understood it well. His mind absorbed all kinds of knowledge with scarcely an effort.

The following is taken from a sketch of Judge Gibson by David Paul Brown, who was admitted to the bar in the year in which Gibson was appointed to the Supreme Bench:

He was a deep student, but not a close student; he worked most effectively, but he worked reluctantly. His mind was too comprehensive to admit of ready concentration. The veins of his learning crossed each other and diverted attention, but when he brought the lens of his mind to a focus, its power was resistless, and every man seemed to perceive and to feel it, but himself.

Unlike Washington, he was not a good nisi prius judge. In the conflicts of a jury trial, he was not a good listener; he would not unfrequently be employed in writing poetry or drawing some fancy sketch, when the bar supposed he was closely engaged in noting the course of the evidence, or preparing his opinion. And in rather a merry way, he once remarked, that he had reached at last the object of his highest ambition, which was to keep his eye fixed upon a dull speaker, while his thoughts were employed with more agreeable objects. "This," he added, "is certainly a great judicial triumph."

He, as has been said, liked the law as a science, but abhorred it in its practical and minute details. He never could have been an eloquent, forensic speaker; but he was, if we may use the phrase, an eloquent thinker, and a most agreeable colloquist. He was, at times, a little rough; but still, even then, the benignity and pleasantness of his countenance satisfied every one that the harshness of his manner sprang from no bitterness of the heart.

The late Chief Justice was not what would be called a refined, modern gentleman; that is, a man in whom the arts of society had suspended, if not extinguished, the charms of nature. With sufficient amenity and courtesy, his great value consisted in the generous outbursts of the heart, in defiance of those conventional restraints which station and official position would seem to impose upon ordinary men. He was sincere, but never ostentatious. He adopted, in the exercises of his charitable feeling, the divine injunction, "Let not thy left hand know what thy right doeth." No man ever heard him speak of his own virtues, and no one ever heard him deny the virtues of others.

CHAPTER XLII.

ASSOCIATE JUSTICES WHO SAT WITH CHIEF JUSTICES TILGHMAN AND GIBSON.

CHAPTER XLII.

Associate Justices Who Sat With Chief Justices Tilghman and Gibson.

Thomas Duncan, commissioned in 1817, was born at Carlisle, November 20, 1760, and educated at Dickinson College. He studied law at Lancaster under Jasper Yeates, who was at that time an associate justice of the Supreme Court. He returned to Carlisle on his admission to the bar, where he soon became the acknowledged leader of his profession, and was said to have had the largest practice of any lawyer in Pennsylvania outside of Philadelphia.

Chief Justice Gibson, as we have already seen, was a student in his office, and the two afterwards sat together upon the Supreme Bench. He was a small man, with a large but well formed head, and was distinguished for his quickness and alertness both of mind and body. He was particularly skillful in the technicalities of special pleading. He died on March 16, 1827, and his remains were interred at Carlisle. The striking epitaph upon his tombstone was composed by Judge Gibson.

Molton Cropper Rogers was born in Delaware, graduated from Princeton College, and was admitted to the bar of Lancaster county in 1811. He was recorder of the mayor's court of that city from 1818 to 1820, and served as Secretary of the Commonwealth from December 16, 1823, to January 2, 1826, when he was appointed an associate justice of the Supreme Court. He served in that capacity until the Supreme Court was reorganized in 1851, and died in Philadelphia in 1863.

Charles Huston studied law with Thomas Duncan, and was admitted to the bar of Cumberland county in August, 1795. He served as president judge of the Fourth Judicial District, consisting of the counties of Bedford, Huntington, Mifflin and Centre, from 1818 to 1826. He was the author of an excellent work on land titles. He was appointed to the Supreme Court in 1826 and served until 1845. He died in 1849.

John Tod, commissioned an associate justice of the Supreme Court on May 25, 1827, was born at Suffield, Hartford county, Connecticut, in November, 1779. He was educated at the village schools, prepared for college by the family pastor, and graduated from Yale. He studied law at New Haven, and was admitted to the Hartford bar in 1800. He was for a time a tutor in a family in Virginia, but tiring of that occupation he started on foot for Pennsylvania, and reached Bedford in 1802, without a penny in his pocket. At that place he obtained employment as a clerk in the office of the prothonotary, and was admitted to the Bedford bar in August of the same year. He was elected to the legislature in 1808

and reëlected for four successive years, serving as speaker during the sessions of 1811 and 1812. He enlisted as a private soldier in the War of 1812 and was elected to the State Senate in 1813, of which body he was the presiding officer during the sessions of 1814-15 and 1815-16. He was elected to Congress in 1820 and again in 1822, resigning in June, 1824, to accept the position of president judge of the Sixteenth District, from which he resigned on his appointment to the Supreme Bench in 1827. Before going upon the bench he had a large and lucrative law practice. He is said to have been an industrious and learned lawyer, and a painstaking and able judge. He died at Bedford, on the 27th day of March, 1830, at the age of fifty-one years.

Frederick Smith, commissioned an associate justice of the Supreme Court in 1828, was the son of an eminent Lutheran minister. He was admitted to the Berks county bar in 1795, and soon acquired a large practice in Reading. He was active in Democratic politics, a member of the legislature, and deputy attorney-general for Berks county. He died at Reading, two years after his appointment to the Supreme Bench.

John Ross was born in Solebury township, Delaware county, on February 29, 1770, studied law with his cousin, Thomas Ross at West Chester, and after his admission to the bar removed to Northampton county. He was a member of Congress in 1818, and while serving in that capacity was appointed president judge of the Seventh Judicial District, which position he held until he was promoted to the Supreme Bench on April 16, 1830. He died on January 31, 1834. An attempt to impeach him on account of neglect of duties and weakening mental powers was made after his promotion to the Supreme Bench in 1832, but failed. He is said to have been of a stern and unrelenting nature, independent of the opinions of others, and possessed of many eccentricities, one of which was a marked fondness for spotted or calico horses, and the lumbering coach in which he traveled from place to place was drawn by a remarkably fine team of such horses. He was the grandfather of Henry P. Ross, who was afterwards president judge of the Seventh Judicial District.

At a time when Chief Justice Gibson was president judge of the Eleventh Judicial District, he gave some offense by playing the violin on a Sunday, and his excuse was that he had forgotten what day it was. When petitions for the impeachment of one of the associate judges of the Supreme Court were pending, Gibson reluctantly testified before a legislative committee that the mind of the associate was failing, whereupon the associate asked Gibson if he had ever known him (the associate) to forget the Sabbath Day, and Gibson was obliged to admit that he never had. This associate judge was probably Judge Ross.

John Kennedy was born in Cumberland county, in June, 1774. He graduated from Dickinson College in 1795, and read law with James Hamilton of the Cumberland county bar. He removed to Fayette county, where he was admitted to the bar in September, 1798, and to the bar of Allegheny county on September 3, 1799. He practiced in Pittsburgh for many years, but continued to reside at Uniontown. He was appointed

to the Supreme Court on November 19, 1830, and served thereon until his death on August 27, 1846.

Thomas Sergeant, brother of John Sergeant, was born in Philadelphia, on January 14, 1782. He graduated at Princeton College in 1798, read law with Jared Ingersoll, and was admitted to the bar in 1802. In 1811 he published a work on foreign attachments. In 1820 he married a granddaughter of Benjamin Franklin, the daughter of Richard Bache. He was a member of the legislature in 1812-14, and a judge of the Philadelphia District Court from 1814 to 1817. He was appointed secretary of the Commonwealth in 1817, and served in that capacity until 1819, when he was appointed attorney-general, serving one year in that office. He was postmaster of Philadelphia from 1824 to 1832, and reporter of the Supreme Court from 1814 to 1828, and published with William Rawle, Jr., seventeen volumes of reports. He was appointed an associate justice of the Supreme Court in 1838, and served until 1846, when he resumed the practice of the law. He published "Constitutional Law" in 1823, "A Sketch of the National Judiciary Powers Exercised Prior to the Adoption of the Constitution," and "A View of the Pennsylvania Land Laws" in 1838. He died at Philadelphia, on May 5, 1860.

Thomas Burnside, commissioned an associate justice of the Supreme Court in 1845, was born in the county of Tyrone, Ireland, on July 28, 1782. His father emigrated to Philadelphia in 1792. Thomas Burnside read law with Hon. Robert Porter of that city, and was admitted to the Philadelphia bar on February 13, 1804, and to the bar of Huntingdon county at the April term of the same year, afterwards settling in Bellefonte, Centre county, from which he was elected to the State Senate in 1811. He served in Congress in 1815 and 1816. He served as president judge of the Eleventh Judicial District from 1816 to 1818, and was appointed president judge of the Fourth Judicial District in 1826, and served in that capacity until 1841, when he was transferred to the Seventh Judicial District consisting of the counties of Montgomery and Bucks, where he served until his appointment to the Supreme Bench. Judge Burnside was of medium height, dark complexioned and very homely; a learned lawyer, an able jurist, and a kind open-hearted gentleman. He died on March 25th, 1851, aged sixty-eight years.

Thomas S. Bell, who was appointed a justice of the Supreme Court on December 18, 1846, was admitted to the Philadelphia bar on April 14, 1821, and removed to Chester county shortly afterwards. He was appointed president judge of the Fifteenth Judicial District on May 16, 1839, and held that position until he was appointed to the Supreme Bench in 1846, where he served until the judges of that court became elective in 1851. He died on June 6, 1861, at the age of sixty years.

Richard Coulter, commissioned an associate justice of the Supreme Court in 1846, was born in Westmoreland county, in March, 1788. His family removed to Greensburg in 1793. He attended Jefferson College, but did not graduate. He read law with his brother-in-law, John Lyon, of Uniontown, Fayette county, and was admitted to the bar of that county

on November 19, 1810, and on February 18, 1811, to the Westmoreland county bar.

Soon after, he entered actively into politics, and was elected to the legislature in 1816 and in the four following years. He was elected a member of Congress in 1826, and reëlected in 1828, 1830 and 1832. He was an unsuccessful candidate for the same office in 1834. At the expiration of his last term in Congress, in 1834, he resumed the practice of law in Greensburg and for eleven years was engaged exclusively in his profession. He is said to have been the most eloquent and impressive jury lawyer who ever practiced at the Westmoreland bar, at which his practice was one of the largest.

He was appointed to the Supreme Bench to succeed Associate Justice John Kennedy, and took his seat September 16, 1846. In 1851 he was a candidate at the first election of judges in the Commonwealth, and was elected to succeed himself, being the only Whig candidate then elected to that office. On the reorganization of the Supreme Court, after the election, he drew the fifteen years term, but died at Greensburg, April 20, 1852. He was a man of much culture and noted for his eloquence.

George Chambers was born in Chambersburg in 1786, and graduated from Princeton College in 1804. He studied law with Judge Duncan, at Carlisle, and was admitted to the Cumberland county bar in 1807. He returned to Chambersburg, where he acquired a large practice, making a speciality of land law. He was elected to Congress in 1832, and was a delegate to the Constitutional Convention convened in 1837. He was appointed an associate justice of the Supreme Court on April 12, 1851, and was a candidate at the election in the fall of that year to succeed himself, but was not elected. He died on March 25, 1866, at which time he was said to have been the largest landholder in Franklin county.

CHAPTER XLIII.

REVISIONS OF THE LAWS—DISTRICT ATTORNEYS.

CHAPTER XLIII.

Revisions of the Laws—District Attorneys.

While Pennsylvania, as is generally known, has never adopted a general Code, it has not been slow to make such changes in the laws as experience has shown from time to time to be desirable, and the principal changes so effected will be referred to in this chapter.

An early change in practice effected first by a general agreement of counsel, second by rules of court, and third by statute, was effected by the requirement that defendants in actions *ex contractu* should be required to file affidavits of defense. The history of this requirement is given in Abeles v. Powell, 6 Pa. Super Ct., 127, as follows:

A third ground of default was introduced in 1795, by an agreement, signed by all the attorneys of the Supreme Court except two, to confess judgment unless the defendant made affidavit "that to the best of his knowledge and belief there was a just cause of defense to the action;" and this was enforced by the court as to the signatory parties. In 1799, a rule to the like effect was adopted by the Supreme and Circuit Courts. In 1809, the Common Pleas of Philadelphia adopted a rule directing judgment of course against the defendant unless he made affidavit that there was a just defense, to the best of his knowledge and belief, with a proviso respecting a partial defense; and this rule was sustained by the Supreme Court: Vanatta v. Anderson, 3 Binn. 417. A similar rule was adopted by the district court of Philadelphia. The first legislation on the subject was the Act of 1835. This authorized "a judgment by default" in certain actions in the district court of Philadelphia, unless the defendant "filed an affidavit of defense, stating therein the nature and character of the same." From this provision, subsequently extended to other courts by statute, or adopted by rule, arose the practice of inquiring into the sufficiency of the defense thus set up, and of taking judgment for want of a sufficient affidavit of defense. The Act of 1874 authorized an appeal to the Supreme Court from a decision against the right to such a judgment. The Procedure Act of 1887 directs that in actions of assumpsit the declaration "shall be replied to by affidavit," and provides for judgment "for want of an affidavit of defense, or for want of a sufficient affidavit, for the whole or part of the plaintiff's claim, as the case may be, in accordance with the present practice." Where the defense is partial, the Act of 1893 permits judgment for the amount admitted to be due; while the Act of 1897 allows judgment to be taken for the portion as to which the affidavit shall be insufficient; with an issue as to matters remaining in dispute. And by the Act of 1889, the defaults, for which judgment is of course, are, want of an appearance, want of a plea, and want of an affidavit of defense, with judgment against the plaintiff for want of a declaration.

At the common law there was no means of compelling the partition of an estate between joint tenants and tenants in common, the writ of partition lying only in favor of coparceners, but by the Act of April 11, 1799, XVI Stats. at L., 340, the Supreme Court was given jurisdiction to grant writs of partition throughout the Commonwealth at the suit of any tenant in common, joint tenant or copartner, and by the Act of March 28, 1806, 4 Sm. L., 335, this jurisdiction was extended to the courts of common pleas. The Act of April 7, 1807, 4 Sm. L., 398, extended this jurisdiction further, so as to include the guardians of minors as defendants, and by later acts jurisdiction in partition was conferred upon the orphans' courts and courts of equity.

By Section 6 of the Act of March 21, 1806, 4 Sm. L., 329, it was provided that pleadings might be amended before or during the trial to cure informalities. The effect of this act was to make amendemnts, which before that time were discretionary, a matter of right, and the granting or refusing of them the subject of revision on appeal. The provisions of this act have since been so extended as to permit changes in the names of parties, and the amendment of defects of form after verdict.

The Act of March 21, 1806, 4 Sm. L., 332, provided for the procedure in ejectment and substituted for the cumbrous procedure at the common law, with its fictitious lease and casual ejector, a simple procedure not involving any legal fiction. By the original act no new ejectment might be brought where two verdicts had been given in succession for the plaintiff or defendant, and judgment rendered thereon, in any writ between the same parties, but by Section 1 of the Act of May 8, 1901, P. L. 142, one verdict and judgment is made final and conclusive. By the Act of March 31, 1812, 5 Sm. L. 395, survivorship in joint tenancy was abolished.

A resolution of the General Assembly passed March 3, 1812, P. L. 263, directed the Governor to request the attorney general to prepare a bill consolidating the whole body of the penal laws of the Commonwealth and suggesting what additions, alterations or changes should take place in the system for the purpose of being laid before the legislature. Such a bill was evidently prepared, as, by the Act of March 29, 1813, P. L. 207, an appropriation of five hundred dollars was made to Jared Ingersoll for his report on the Penal Code of the Commonwealth, made in pursuance of said resolution, but the bill does not seem to have been enacted into a law.

A joint resolution approved the 23d day of March, 1830, P. L. 408, provided as follows:

Resolved 1. That the Governor be and he is hereby authorized and required to appoint three competent persons, learned in the laws of this Commonwealth, as commissioners to revise, collate and digest all such public acts and statutes of the civil code of this state, and all such British statutes in force in this state, as are general and permanent in their nature, allotting to such commissioners their parts respectively, as he shall deem fit: *Provided also,* That the said commissioners shall examine, correct and approve the separate labors of each.

Resolved 2. That it shall be the duty of the revisers to carefully collect and reduce into one act, the different acts and parts of acts which from similarity of subject ought to be so arranged and consolidated; to divest the said acts of all redundant phrases and useless verbiage; to distribute and arrange the several acts systematically, under proper titles, divisions and sections; to omit in the revision all such acts or parts of acts as shall have been repealed or supplied by subsequent acts, or which may have expired by their own limitation; to suggest to the legislature such contradictions, omissions or imperfections, as may appear in the statutes, to be revised, and the mode in which the same may be reconciled, supplied or amended; to designate such acts or parts of acts which ought to be repealed, and recommend the passage of such new acts or parts of acts as such repeal may render necessary; and generally it shall be the duty of the revisers to execute the duties hereby confided to them, in such a manner as to render the statute laws of Pennsylvania more simple, plain and perfect: *Provided, nevertheless,* That in the revision and collection of the statutes, no such change shall be made in their phraseology by which their true intent and meaning shall in any wise be impaired, altered or affected, except in those instances in which it shall be expressly intended and proposed to amend or change the existing provisions of such statutes.

Resolved 3. That it shall be the duty of the persons so appointed, together with the duties enjoined by the preceding resolution, to report whether it would be expedient to introduce any, and if any, what change in the forms and modes of proceeding in the administration of the laws.

Resolved 4. That the revisers shall be allowed the term of two years, if necessary, to complete the duties assigned to them in and by these resolutions, and on the completion of the duties so assigned, shall report the result of their labors to the legislature, and in the execution of those duties they shall have free access to any public records or papers of this State, and be permitted to examine the same without fee or reward.

Resolved 5. That the revisers be and they are hereby allowed such compensation as the legislature shall deem them entitled to.

Resolved 6. That the revisers be and they are hereby directed to revise the several statutes relative to the settlement of accounts before registers, and proceedings in the orphans' courts, as soon as conveniently may be, and report the same for the determination of the general assembly at their next session.

Under the provisions of this resolution, William Rawle, Thomas I. Wharton and Joel Jones were appointed commissioners. A sketch of William Rawle will be found elsewhere herein.

Thomas I. Wharton, who was nephew and biographer of William Rawle, was born at Philadelphia, on May 17, 1791. He graduated at the University of Pennsylvania in 1807, studied law with his uncle, was admitted to the Bar, and served as a captain of infantry in the War of 1812. He was a reporter of the decisions of the Supreme Court, a legal author and annotator, and acquired a high reputation at the bar. He died in Philadelphia on April 7, 1856.

Joel Jones was born in Connecticut, and graduated at Yale College in 1817 at the head of his class, subsequently attending the Litchfield Law

School. He settled at Easton, Pennsylvania, where he became a leader of the bar. After the termination of his services on this commission, he was appointed a judge of the District Court for the City and County of Philadelphia on April 22, 1835, and became president judge of that tribunal on April 8, 1845, serving in that capacity until February 1, 1848. He was a profound scholar, and was the first president of Girard College.

These commissioners reported various drafts of bills between the time of their appointment and 1836, most of which were passed with few changes. Some idea of the magnitude of their labors may be gained from the following list of some of the acts passed pursuant to their recommendation. The reports of the commissioners which accompanied the drafts of these acts will be found in "Parke & Johnson's Digest," as indicated in the list:

An act relating to references and arbitration, approved June 16, 1836, P. L. 715. P. & J. Digest, Vol. II, p. 705.

An act relating to assignees for the benefit of creditors and other trustees, approved June 14, 1836, P. L. 628. P. & J. Digest, Vol. II, p. 709.

An act relating to the commencement of actions, approved June 13, 1836, P. L. 568. P. & J. Digest, Vol. II, p. 713.

An act relating to domestic attachment, approved June 13, 1836, P. L. 606. P. & J. Digest, Vol. II, p. 714.

An act relating to the attachment of vessels, approved June 13, 1836, P. L. 616. P. & J. Digest, Vol. II, p. 719.

An act relating to bonds with penalties and official bonds, approved June 14, 1836, P. L. 637. P. & J. Digest, Vol. II, p. 720.

An act relating to counties and townships, and county and township officers, approved April 15, 1834, P. L. 537. P. & J. Digest, Vol. II, p. 722.

An act relating to county rates and levies, and township rates and levies, approved April 15, 1834, P. L. 509. P. & J. Digest, Vol. II, p. 740.

An act relating to executions, approved June 16, 1836, P. L. 755. P. & J. Digest, Vol. II, p. 744.

An act relating to executors and administrators, approved February 24, 1834, P. L. 70. P. & J. Digest, Vol. II, p. 752.

An act relating to insolvent debtors, approved June 16, 1836, P. L. 729. P. & J. Digest, Vol. II, p. 766.

An act relating to the descent and distribution of the estates of intestates, approved April 8, 1833, P. L. 315. P. & J. Digest, Vol. II, p. 780.

An act relating to the organization of courts of justice, approved April 14, 1834, P. L. 333. P. & J. Digest, Vol. II, p. 785.

An act relating to the commencement of actions, approved June 13, 1836, P. L. 568. P. & J. Digest, Vol. II, p. 803.

An act relating to writs of quo warranto and mandamus, approved June 14, 1836, P. L. 621. P. & J. Digest, Vol. II, p. 809.

An act relating to the jurisdictions and powers of courts, approved June 16, 1836, P. L. 784. P. & J. Digest, Vol. II, p. 814.

An act relating to inns, taverns and retailers of vinous and spirituous liquors, approved March 11, 1834, P. L. 117. P. & J. Digest, Vol. II, p. 817.

An act relating to lunatics and habitual drunkards, approved June 13, 1836, P. L. 589. P. & J. Digest, Vol. II, p. 818.

An act relating to the lien of mechanics and others upon buildings, approved June 16, 1836, P. L. 695. P. & J. Digest, Vol. II, p. 824.

An act relating to orphans' courts, approved March 29, 1832, P. L. 190. P. & J. Digest, Vol. II, p. 828.

An act relating to the support and employment of the poor, approved June 13, 1836, P. L. 539. P. & J. Digest, Vol. II, p. 853.

An act relating to registers and registers' courts, approved March 15, 1832, P. L. 135. P. & J. Digest, Vol. II, p. 861.

An act relating to roads, highways and bridges, approved June 13, 1836, P. L. 551. P. & J. Digest, Vol. II, p. 870.

An act relating to last wills and testaments, approved April 8, 1833, P. L. 249. P. & J. Digest, Vol. II, p. 872.

In all, the Commissioners submitted thirty bills, but not all of them were passed. These acts taken together constitute an almost complete civil practice code, and a great part of their provisions are still in force.

Prior to the passage of the Act of July 12, 1842, P. L. 389, imprisonment for debt existed in Pennsylvania under the provisions of a number of early laws. The Act of February 8, 1819, 7 Sm. L., 150, exempted all females from arrest or imprisonment for debts contracted after the passage of that act, but males continued liable until the passage of the said Act of 1842, the first section of which, still in force, provides as follows:

From and after the passage of this act no person shall be arrested or imprisoned on any civil process issuing out of any court of this Commonwealth, in any suit or proceeding instituted for the recovery of any money due upon any judgment or decree founded upon contract, or due upon any contract, express or implied, or for the recovery of any damages for the non-performance of any contract, excepting in proceeding as for contempt, to enforce civil remedies, action for fines or penalties, or on promises to marry, on moneys collected by any public officer, or for any misconduct or neglect in office or in any professional employment, in which cases the remedies shall remain as heretofore: Provided, That this section shall not extend to any person who shall not have resided in this State for twenty days previous to the commencement of a suit against him.

The following account of the "Price Act" of 1853 is taken from the annual address of the president of the Pennsylvania Bar Association, Henry J. Steele, delivered on June 29, 1915:

Down to the time of the enactment of the Act of April 18, 1853, commonly known as the "Price Act," the practice had been to resort to special legislation for the purpose of making sales of real estate, wherever it was under public or charitable use, or private trust or use, or there was any personal disability in the owner to convey. To remedy this the legislature, at the session of 1852, adopted a resolution authorizing the governor to appoint three commissioners to revise the laws of the State upon several subjects, including "the subject of selling real estate by guardians, executors, administrators and others acting in a representative capacity." The resolution instructed the commissioners "to prepare drafts of the

general laws to be submitted to the consideration of the next legislature." The governor appointed as commissioners Hon. James M. Porter, E. A. Penniman and J. Ellis Bonham. Though not one of the commissioners, at the request of Governor Bigler the preparation of the bill was committed to Eli K. Price, an eminent member of the Philadelphia bar, and an authority on the subject of the law relating to real estate, from whom the act afterward took its name. When the draft was submitted to the commissioners, Judge Porter added part of the second section of the act. The purpose of the act is well expressed in its preamble, as follows:

WHEREAS, the general welfare requires that real estate should be freely alienable, and be made productive to the living owners thereof:

AND WHEREAS, in matters which the judiciary is competent to hear and decide, it is expedient that the Courts should adjudicate them after a full hearing of all parties, rather than that they should be determined by special legislative acts upon an *ex parte* hearing.

In their report the commissioners, in part, said: "In the preparation of this bill, there has been an examination of nearly all the laws that have been passed from the first settlement of the province to the present time, in relation to the sale, purchase and exchange of particular estates, belonging to private individuals, corporations, or held for some public, charitable or religious use, that no longer required the ownership of such real estate, or needs its proceeds. Such enactments exceed a thousand cases. The bill has been framed to cover these cases, and we believe that it would be found in practice to include more than nine-tenths of those which have hitherto been the subject of special and private legislation. In addition to the enumerated cases, we have introduced in the second section of the bill, a general power intended to cover all cases of trust, all powers, and wherever any party in interest is under any legal disability. . . . In conclusion we may say that there is nothing dangerous in this bill to vested rights or the security of property. It takes away no personal rights, but converts that which is dead and unproductive into productive estates, and thus to make property subserve the purposes intended in the maintenance and comfort of its owners, or those who should enjoy its fruits and products. There is nothing authorized by this bill that has not been repeatedly authorized by the legislature, and in every line we have followed established precedents."

The intention of this act was manifestly to untie the cords which theretofore had fettered the real estate of the Commonwealth, whether bound around it by the disabilities of persons, the limitations of contingent interests, or by restrictions to limited uses and purposes, and at the same time to preserve to every interest its proper share in the result. Such has been the view of our Courts, and the law being regarded as beneficent and remedial, it has always been construed to carry out its main intent. It was a wise piece of constructive legislation, and has been of great service in promoting the free alienation of real estate within the Commonwealth. By this act the fetters upon the alienation of land were entirely thrown off, and there can scarcely arise hereafter a case where the power to sell real estate is wanting, that such a power cannot be supplied by an order of court, if the circumstances are such as to convince the court that a sale ought to be made.

A resolution passed on April 19, 1858, P. L. 523, provided for a revis-

ion of the Penal Code of the Commonwealth. It authorized the Governor to appoint three commissioners to revise, collate and digest all the acts and statutes relating to the penal laws of the Commonwealth; to reduce all such acts into one act and arrange the same systematically under proper titles, divisions and sections, omitting all acts and parts of acts which had expired or had been repealed or supplied by subsequent acts; to suggest to the legislature any contradictions, omissions, defects or imperfections that might appear in the acts to be revised, and the mode in which the same might be reconciled; and to designate such acts as ought to be repealed, and to submit new acts which might be rendered advisable by reason of such repeal. The commission was further to report whether any, and if any what, changes were advisable in the modes and forms of procedure in the administration of the penal laws of the Commonwealth or in the mode of selecting and summoning juries in criminal cases.

The governor appointed Edward King, John C. Knox and David Webster as such commissioners. Edward King is elsewhere mentioned as a president judge of the First Judicial District. John C. Knox is also elsewhere mentioned in this work as an associate justice of the Supreme Court, from which position he resigned in 1857 to become attorney general of the Commonwealth. David Webster was a prominent member of the Philadelphia bar.

The commissioners made their report to the legislature on January 4, 1860, and submitted therewith drafts of two bills, one entitled "An act to consolidate, revise and amend the Penal Laws of this Commonwealth," and the other entitled "An act to consolidate, revise and amend the laws of this Commonwealth relating to criminal procedure and pleading." Both of these bills were enacted into law, with few changes, and are still in force, except as amended by a comparatively small number of later acts.

Prior to the fifteenth day of April, 1869, no party having any interest in the determination of any civil suit was a competent witness therein, but by the act approved on that date, P. L. 30, such parties were made competent as follows:

Section 1. That no interest nor policy of law shall exclude a party or person from being a witness in any civil proceeding; Provided, This act shall not alter the law, as now declared and practiced in the courts of this Commonwealth, so as to allow husband and wife to testify against each other, nor counsel to testify to the confidential communication of his client; and this act shall not apply to actions by or against executors, administrators or guardians, nor where the assignor of the thing or contract in action may be dead, excepting in issues and inquiries *devisavit vel non* and others, respecting the right of such deceased owner, between parties claiming such right by devolution on the death of such owner.

Section 2. That a party to the record of any civil proceeding in law or equity, or a person for whose immediate benefit such proceeding is prosecuted or defended, may be examined as if under cross-examination, at the instance of the adverse party, or any of them, and for that purpose may be compelled, in the same manner, and subject to the same rules for examination, as any other witness, to testify; but the party calling for

such examination shall not be concluded thereby, but may rebut it by counter testimony.

Section 3. That the testimony of witnesses authorized by this act may be had by deposition or commission issued, as the case may require, with such notice to the party to be examined, and to the adverse party, as is now or may hereafter be prescribed by the rules of the proper court, touching the taking of depositions and testimony on commission.

This act, it will be observed, provided not only that all parties should be competent witnesses, but that no person should be excluded from being a witness because of "any policy of law." Prior to the passage of the act, witnesses were sometimes excluded on the ground of the policy of the law. For instance, it was a settled rule that no party to commercial paper, negotiated in the ordinary course of business, before maturity, was competent to testify to anything tending to impeach its validity before or at the time it passed out of his hands, not on the ground of interest, but because of the policy of the law. This was changed by the Act of 1869.[1] A supplement to the Act of 1869, approved April 9, 1870, P. L. 44, provided as follows:

That in all actions or civil proceedings in any of the courts of this Commonwealth, brought by or against executors, administrators or guardians, or in actions where the assignor of the thing or contract in action may be dead, no interest or policy of law shall exclude any party to the record from testifying to matters occurring since the death of the person whose estate, through a legal representative, is a party to the record.

The Act of April 15, 1869, above referred to, was repealed and superseded by the Act of May 23, 1887, P. L. 158, relating to the competency of witnesses and the rules of evidence.

The Act of May 25, 1887, P. L. 21, abolished the distinctions theretofore existing between actions ex contractu and actions ex delicto, and provided that all demands theretofore recoverable in debt, assumpsit or covenant, should be sued for and recovered in one form of action to be called an "action of assumpsit," and that all damages theretofore recoverable in trespass, trover or trespass on the case, should be sued for and recovered in one form of action to be called an "action of trespass." This act is too familiar to the reader to be referred to at greater length.

The recent Act of May 14, 1915, P. L. 483, provides for procedure in actions of assumpsit and trespass, except actions for libel and slander. This action abolishes demurrers and otherwise effects very radical changes in practice.

As originally drawn, the twelfth section of this act required affidavits of defense to be filed within fifteen days from the day when the statement was served on the defendant, under which provision such statement might he required to be filed before the return day of the writ or summons. This defect has been cured by the Act of March 10, 1921, No. 5, which amends said section by adding thereto the following: "And

[1]State Bank of Harrisburg vs. Rhoads, 89 Pa., 353 (1879).

provided further, That no affidavit of defense shall be required to be filed under the provisions of this act in any case before the return day of the writ or summons."

Since 1901 a number of acts recommended by the Commission on Uniform State Legislation have been passed, such as the Negotiable Instrument Act, the Warehouse Receipts Act, the Stock Transfer Act, the Bills of Lading Act, the Partnership Act and the Sales Act.

Prior to the passage of the Act of May 3, 1850, P. L. 654, all criminal prosecutions were conducted by deputies of the attorney general, one of which was appointed by him for each county in the State. There was no act authorizing the appointment of such deputies, though a number of acts recognized their existence. By the act just mentioned, these officers were superseded by district attorneys to be elected in each county for a term of three years. The act required that these officers should be learned in the law, admitted to practice for at least two years, and have resided in the county for which they were elected one year preceding their election. They were required to sign all bills of indictment, and conduct in court all criminal or other prosecutions in the name of the Commonwealth; or, when the State was a party, in the county for which they were respectively elected, and perform all the duties which were previously to be performed by deputy attorneys general, and receive the same fees or emoluments of office. By Section 6 of said act no district attorney is eligible to a seat in the legislature or to any other State office during his term.

CHAPTER XLIV.

WILLIAM RAWLE, JOHN SERGEANT, CHARLES CHAUNCEY, DAVID PAUL BROWN AND WILLIAM M. MEREDITH.

Gov. ANDREW G. CURTIN

Gov. FRANCIS R. SHANK

WILLIAM M. MEREDITH

Gov. JOHN F. HARTRANFT

Gov. HENRY M. HOLT

CHAPTER XLIV.

William Rawle, John Sergeant, Charles Chauncey, David Paul Brown and William M. Meredith.

William Rawle was born on the 28th of April, 1759, in Philadelphia. His great-great-grandfather was Francis Rawle, who arrived at Philadelphia on the 23d of June, 1686. His son, Francis Rawle (2d), was a member of the Assembly for the city of Philadelphia for a number of years, and took a prominent part in the deliberations of that body. His son William, the grandfather of the subject of this sketch, was a man of parts and education. His son Francis, the father of William Rawle, was born on the 10th day of July, 1729, and died at the early age of thirty-two years as the result of a wound accidentally received while hunting. He received a liberal education, and is said to have been a person of very attractive manners and conversation. He married Rebecca, the daughter of Edward Warner.

William Rawle was educated at the Friends' Academy in Philadelphia. At the beginning of the Revolution he was about seventeen years of age. His stepfather, Mr. Shoemaker, was mayor of Philadelphia during the period of its occupation by the British army, and when the city was evacuated he removed to New York, taking young Rawle with him, where the latter began the study of the law under the direction of Mr. Kemp, believed to have been attorney general of that colony. In August, 1781, Rawle arrived in London and immediately entered himself as a student at the Middle Temple, where he continued until April, 1782. He returned to America by the way of France, and arrived in Philadelphia on the 17th day of January, 1783, where he resumed the study of the law, and was admitted to practice in the Court of Common Pleas for the City and County of Philadelphia on September 15, 1783. On the 13th of November following he married Sarah Coates Burge.

His professional career was not distinguished by early success. His progress was so slow that at one time he had determined to abandon the profession and retire into the country to an agricultural life. He early acquired the regard of his fellow-citizens, however, and was chosen a member of the Assembly for the city of Philadelphia in October, 1789. This was his only political experience. He was appointed United States attorney for the District of Pennsylvania on July 18, 1791, which position he held until May 6, 1800, when he resigned. While serving in this capacity he prosecuted John Fries for treason. This trial is elsewhere referred to herein.

In 1822, on the death of Jared Ingersoll, he succeeded him in the office of chancellor of the Society of Associated Members of the Bar,

and at an annual meeting of the society he delivered an address in which he gave many interesting recollections of the early members of the bar excerpts from which have been given in previous chapters of this work. In this address he discusses the question of the cause of the slow progress made at our judicial proceedings, as follows:

"I incline to think," he says, "that it is to be found in the length, or rather, the manner of our speeches. On the trial of issues in fact, the examination of witnesses does not generally consume more time with us than in England. Indeed, their cross-examinations are commonly more dilated than ours. But speeches of the great length to which we are accustomed are there unknown. An hour is deemed a large space of time for an address to a jury. The same moderation is carried into the discussion of arguments in banc. Nine eminent counsel were engaged in the celebrated case of Lindo against Rodney, which I had the pleasure of hearing. It occupied but two mornings. With us it would probably have employed as many weeks. The great cause of delay with us is in the introduction of books, reading entire cases and discussing every case that is read; a practice entirely unknown there." Then on the question how may this evil, which certainly has not diminished since the date of his discourse, be corrected—he tells us that in Athens the duration of a speech was regulated by the clepsydra (or hour glass), under the direction of the court, and that from some of the epistles of Pliny it may be inferred that after the reign of the emperors commenced, the Athenian practice was occasionally adopted at Rome. He concludes, however, that such a power could not safely be lodged in the bench here, consistently with our ideas of "Virtue, Liberty, and Independence," and that, after all, the best hour-glass is public opinion.

About the period of these addresses, Mr. Rawle was twice offered the position of presiding judge of the District Court of the City and County of Philadelphia by Governor Hiester, both of which offers he declined.

In 1825 he published his "View of the Constitution of the United States," a practical and intelligent description and explanation of the theory and operation of our political system. He took an active part in the formation of the Historical Society in 1825, serving as its first president, and contributed numerous articles to its proceedings, including a biographical sketch of Sir William Keith and a sketch of the life of Thomas Mifflin. In 1830 Mr. Rawle was appointed by Governor Wolfe one of the three commissioners to revise, collate and digest the civil code of the State, reference to which is more particularly made elsewhere herein, and joined in all the reports made by the commissioners, excepting the last, which was prepared and transmitted in March, 1836, a few weeks before his decease. His health had been failing for some time, and in 1835 his condition became such that he was seldom able to leave his house, and he died on the 12th of April, 1836. His character is thus summed up by Thomas I. Wharton in his Memoir, from which the foregoing facts have been taken:

Mr. Rawle was an accomplished jurist, a good scholar and a person of great taste and great general acquirements. His reading in early life had been extensive; and he brought to his professional studies a discriminating and healthy mind, which enabled him to make the best use of what he read. His learning was not confined to the jurisprudence of England and America, but extended much deeper into that of the ancient and modern law of the continent of Europe than was usual in the last century. His professional business for the twenty years between about 1793 and 1813 was very great, and his income large. His name appears in more of the important causes of that period, and his arguments always commanded the attention and respect of the court. His address to a jury was simple in diction, always free from unnecessary ornament, but earnest and impressive. I have heard, as already said, that his deportment was conciliating to his adversaries; and I believe that it may be said with truth, that he never made an enemy at the bar.

His classical knowledge was more extensive and accurate than that of most men in this country, not scholars by profession. He read a great deal, and to a late period of his life, in the Roman authors. Many of his editions belonged to his grandfather, William Rawle. With the Greek writers, he was not so familiar; though he made the Greek Testament a frequent study. He was fond of poetry; and at one period of his life, wrote a great deal of it and very agreeably; but few of his verses are left. I have mentioned in another place that he drew and painted well. I have seen sketches of his that would do credit to artists of reputation.

His son, William Rawle, Jr., was the author of "Rawle's Reports."

John Sergeant was born in the year 1779. He was the son of Jonathan Dickinson Sergeant, first attorney general of the State of Pennsylvania. He received his primary education in the schools of the University of Pennsylvania. In the spring of 1794 he went to Princeton College, where he graduated in September, 1795. After a short time spent in a mercantile counting-house, he began the study of the law in March, 1797, in the office of Jared Ingersoll, and was admitted to the bar in July, 1799, at the age of nineteen years and seven months. In 1800, soon after the first election of Governor McKean, he was appointed to prosecute for the Commonwealth in Chester county, and during that and several subsequent years he prosecuted also in Philadelphia county, and occasionally in the Mayor's Court of the City of Philadelphia. In 1802, he was appointed by Mr. Jefferson a commissioner of bankrupts. In 1805 he was elected a member of the House of Representatives of Pennsylvania, for the city of Philadelphia. In 1806, the office of Recorder of the City of Philadelphia, was tendered to him by Governor McKean, but he declined it. That office had been successively held by Mr. Wilcocks and Mr. Dallas, immeately before the offer which has been referred to. Having declined a reëlection in 1806, he was again in 1807 elected to the legislature. During the session of 1807-8, he was chairman of the committee on roads and inland navigation, and in that capacity reported the first act giving the direct aid of the State to internal improvements. In 1815, he was elected to Congress by the district composed of the City and County of Philadel-

phia and County of Delaware. He was elected from the same district to the three following Congresses—the last time in 1820, without opposition; and at the end of that term he declined a reëlection, and devoted himself again exclusively to his private vocations. In 1826, Mr. Sergeant was appointed by President Adams Minister from the United States to what was commonly called the Congress of Panama, which was expected to meet at Tacubaya, in Mexico, and to be composed of plenipotentiaries from the various States of North and South America. The disturbances in South America about that time prevented the assembling of the Congress, and he returned to the United States in July, 1827. In the following October he was sent to Congress by the city of Philadelphia, where he staid for one year, and then returned again to private life. In 1832, he was taken up by the Whig party of the United States as its candidate for the vice-presidency, Henry Clay being the candidate for the presidency on the same ticket. In 1837 he was elected by the city of Philadelphia a member of the convention to reform the Constitution of Pennsylvania, of which body he was by it elected president. In 1840, Mr. Sergeant was again elected to Congress, from which he retired in the year 1841.

On his death in November, 1852, at a meeting of the bar of Philadelphia held for the purpose, eulogies were delivered upon his character, among them one by Horace Binney, who had been his lifelong associate at the bar, from which the following excerpts are taken:

Mr. Sergeant and myself were fellow-students in the office of the late Jared Ingersoll—a name that I can never mention without the profoundest veneration, as my master and guide in the law,—and it was the good fortune of both Mr. Sergeant and myself to be raised under the eye of such a man, at such a time. . . .

Mr. Sergeant was admitted into Mr. Ingersoll's office some few, perhaps half a dozen, months before me. We were of the same age within a short month. He was admitted to the bar a term in advance of me; he in December, 1799, and myself in the following March.

In Mr. Ingersoll's office, Mr. Sergeant was a faithful student—addicted to little pleasure—social, cheerful, and gay, with the friends whom he preferred; and giving to myself, without stint, all the leisure time he had, by night and day, for the purpose of refreshment, or of mutual benefit, in the course of our studies. He had at that time, what all have since observed, an extraordinary quickness of thought, and an equally extraordinary grasp or comprehension of the thought or argument that was opposed to him. Whatever he studied, he knew well; and, when he left the office, was as accomplished a student as ever was admitted to the bar. Mr. Ingersoll's opinion of him was such, that I recollect, upon one occasion, when I went to the master to solve a point which my ignorance had not comprehended, that he said to me, "Go to Mr. Sergeant; he has been over that, and he can tell you, if anybody can." I accordingly went to him, and he told me. This remarkable power of Mr. Sergeant, his quickness of thought, and grasp of comprehension of whatever was submitted to him, either on the same side or against him, you must have been familiar with. . . .

His first striking success at the Bar you all remember, or will remem-

ber it, when I state that it was in the case of Bender v. Fromberger, in 1806. I need not say what that case was. As often as I have thought of it, and of its effect upon him, I have thought as any person acquainted with the case and counsel will think, when he refers to Ackroyd and Smithson, in Lord Campbell's "Life of Lord Eldon." It settled his position at the bar—it settled it with the Court; for though, after gaining the cause upon matter of pleading, and gaining also one of the points, and an important one, upon the merits—that of the return of the purchase-money, with interest, upon a covenant of general warranty—he lost it upon the other, that is to say, the claim to indemnity to the value of the improvements, yet he gained more than he had lost in the compliment that was paid him from the bench, and is introduced into the report, that, if any argument would have shaken the opinion of the judge, it would have been Mr. Sergeant's. This was fully equivalent to what Dunning said to Mr. Scott, when he rose to support a case at the assizes in opposition to Ackroyd and Smithson. "Sit down, Mr. Scott, I will not hear you. Are you not the Mr. Scott that argued the case of Ackroyd and Smithson?" Mr. Scott said that he did argue it. "Then, sir, I will not hear you. I have read your argument in that case, and I defy you or any man in England to answer it." . . .

He worked with ease and vigour in many fields. It was not altogether so with our predecessors at this bar. Although they were all competent, able, and effective men, there was a marked difference in them in respect to their particular excellence. Mr. Lewis was the crown lawyer—the criminal lawyer by way of eminence. Mr. Edward Tilghman was the lawyer for estates and tenures, devises and remainders. Mr. Ingersoll, Mr. Dallas and Mr. Rawle were most able advocates, and more able than others in commercial law. And Mr. DuPonceau was the prime leader in maritime and public law. At that time the preference was given by all of them to the leader in that particular branch upon which the case might depend. In modern times, I believe this practice is forgotten and passed away. General finish and accomplishment prevail, and there is no one now can claim to himself a prominent ability in any particular branch. . . .

Mr. Sergeant was in stature rather below the middle height, delicately formed, with dark hair, which remained unchanged up to the time of his death. He had fine large, dark, lustrous eyes, a prominent nose, large mouth, and a forehead expansive and indicative of great intellectual power —causality and order were its prominent indications, but in all respects it was a perfect study for a phrenologist. He always dressed with the greatest neatness and precision. His temper was mild and equable; his manners cordial and unsophisticated. He was one of the first lawyers of his day, and certainly, if equalled, not surpassed by any of his cotemporaries, as an eloquent and effective advocate. His voice was not musical, but at times it was powerful, and always most persuasive. In addressing a jury, he seemed rather to argue his case with them than to them, and in the language of one of his competitors, he virtually got into the jury-box, and took part, as it were, in the decision of his own case. His high character for honesty and candor always secured to him an attentive hearing; and the freshness and warmth of his feelings, and the energy of his appeals, readily led to favorable results. He was a good general scholar, but on that score was not equal to his brother, Judge Sergeant, or to Mr. Bin-

ney. Too much of his time was devoted to legal and political science, to admit of his bestowing much attention upon belle lettre studies.

Charles Chauncey was a native of the State of Connecticut and was descended from a line of most respectable ancestors, originally from England. He was a graduate of Yale College at quite an early age, and was educated for the law and admitted to the bar in New Haven in 1798. His removal to Philadelphia was determined by the advice of Chief Justice Ellsworth. The selection of the bar with which Mr. Chauncey should become connected for life was referred, for his opinion, to this eminent man, an old friend of the family, and then Chief Justice of the Supreme Court of the United States; and, without hesitation, he advised Mr. Chauncey to come to Philadelphia. Mr. Chauncey's unnecessary modesty suggested the apprehension that the many men of distinction then at this bar made his success at it impossible; but Mr. Ellsworth's reply was, that this was the ground of his recommendation. He said it was true that the bar of Philadelphia was at that time the strongest bar in the country; but that from this circumstance it would supply the best models, and demand the more study and effort on his part, and that his education and intelligence required nothing but these to carry him to the position he would desire to attain at it.

On his death in August, 1849, a meeting of the Philadelphia bar was held at which Horace Binney delivered an eulogy upon his character from which the following is taken:

After a few months' attendance in a lawyer's office in this city, to acquaint himself with the local practice, Mr. Chauncey applied, as an attorney of the courts in Connecticut, for admission, by comity, as an attorney of the common pleas in this county. But that principle was not then settled; and the president of the court, the Honourable John D. Coxe, a very learned and excellent judge, but generally inclined to strict construction, doubted the court's authority, and deferred an answer to the motion, in such a way as to discourage the applicant. It was an anxious position for Mr. Chauncey, as it seemed to present the alternative of renouncing the bar of Pennsylvania, or of undergoing a second apprenticeship to the law; but he had the good fortune to have a warm friend as well as an astute one,—and what young man of merit at the Bar had not—in the late Edward Tilghman; and upon his advice, founded either on a more liberal rule in the common pleas of Chester, or on the less precise mind of its president, to apply for admission, upon the ground of comity, to the court of that county. The application was successful, and his admission as an attorney of the common pleas of Chester county, was the title upon which he was admitted to this bar in January, 1799. . . .

His good education in the law, together with his sound judgment, regular industry, true fidelity, and inviting amenity of manners, soon removed from before him the impediments which generally retard the advancement of the young members of a crowded Bar. In a rather unusually short time his connexions with merchants and traders in the city were formed for the collection of debts, and for the first transactions of business; and his facility and accuracy brought him enough to sustain him in his preparation for higher concerns. . . .

In his addresses to the court, nothing could be more direct, perspicuous, and logical. He said nothing for the mere pleasure of speaking; and was generally, therefore, distinguished by a brevity which left the attention of the Bench as wide awake at the end as it was at the beginning. The cast of his mind was judicial rather than speculative; and if he had accepted a seat on the bench, he would undoubtedly have left the reputation of an able and learned judge, and I need not say, an example for universal imitation of patient attention and research, of great conscientiousness, and of most perfect urbanity of manners. He was offered high judicial station in this State, at least once to my knowledge; but he thought that a sphere of less public duty was the best for him, especially as it would draw him less from the domestic and social duties, for which he had a special election and preference, to the benefit and comfort of almost as many as knew him. . . .

I must, therefore, represent him as a most successful advocate, as well as a sound, well-read, judicious and most upright lawyer; and his well-balanced and well-applied powers, both intellectual and moral, had the force and effect to establish him in the profession, after such a lapse of time only, as in comparison with his longer life, may be called short. . . . The example is of the greatest possible benefit to the younger members of the bar; for it is an example of the perfect professional success of a man of great modesty and gentleness, advanced to the top of his profession by a sound and judicious mind, by regular industry, by unsullied purity of morals, and by unaffectedly gracious and obliging manners. . . .

It would be unpardonable in a work of this nature to refrain from noticing David Paul Brown, to whom the profession is indebted for much information relative to the members of the bar of the early nineteenth century. He was born at Philadelphia, on September 28, 1795, and educated by private teachers. He began the study of medicine in the office of Doctor Benjamin Rush but, on the death of that celebrated physician, turned his attention to the law, was entered in the office of William Rawle, and admitted to the bar on September 4, 1816. He soon attracted attention, and took a leading place at the bar, especially in criminal practice. He was remarkable for forensic eloquence and his skill in the examination of witnesses. It is said that at one time he appeared in almost every criminal case of importance.

He found time, however, to indulge in literary pursuits, and wrote a number of poems, long since forgotten. In 1830 he wrote a play entitled "Sertorius, or the Roman Patriot," a tragedy in which the elder Booth took the leading part. Later, he wrote "The Prophet of St. Paul," a melodrama which was performed at one of the Philadelphia theatres, and "Love and Honor," a farce, which was never played. A work of more interest to the legal profession was "The Forum; or Forty Years Full Practice at the Philadelphia Bar," published in two volumes, octavo, in Philadelphia, in 1856. In this interesting work he gives biographical sketches of many of the early members of the bar and judges whom he had known in his long practice. The work also contains accounts of many leading criminal cases in which he was counsel, besides much matter of a

miscellaneous nature of interest to lawyers. The writer is indebted to this work for much of the material contained herein. In his later years his practice diminished, and he dropped from public notice.

William Morris Meredith was for nearly half a century perhaps the most conspicuous lawyer within the Commonwealth. "His life and services," says Mr. Ashhurst in his Memoir of Mr. Meredith, "including the first seventy years of the Nineteenth Century and embracing service in both our Constitutional Conventions, of the latter of which he was president, membership in the Cabinet of President Taylor in 1849, and the attorney generalship of the State during the Civil War, seem to form a link between the early days of our Commonwealth and the State, as we now know it, which no other life furnishes."

Mr. Meredith was born at Philadelphia, on June 8, 1799. His father, William Meredith, was a lawyer of some eminence, afterwards better known as the president of the Schuylkill Bank. His grandfather, Jonathan Meredith, emigrated from Herefordshire, in North Wales, about 1750. Mr. Meredith graduated at the University of Pennsylvania in 1812, with second honor, at the unusual age of thirteen. He was admitted to the bar in 1817, when but eighteen years of age. He was long acquiring practice, and frequently stated that he had been ten years at the bar before he earned enough to pay for his clothing or office rent, and at one time seriously thought of going to New Orleans to engage in mercantile pursuits. These years, however, he devoted to the most profound and incessant study, reading the whole body of the English Reports from the Year Books down.

Mr. Meredith was a member of the legislature from 1824 to 1828, and a member of the Select Council of Philadelphia from 1833 to 1849, serving as president of that body from 1834 to the end of his term. He was appointed United States District Attorney in 1841, and served until 1842, when he resigned on the death of President Harrison.

He was a member of the Constitutional Convention of 1837, and took an active and leading part in its deliberations, in which he frequently came in contact in debate with Thaddeus Stevens, the leader of the Anti-Masonic party. On the election of Taylor and Fillmore in 1848, Mr. Meredith was appointed Secretary of the Treasury, and served until July 20, 1850, resigning on the accession of Mr. Fillmore to the presidency after Taylor's death.

In 1861, at the outbreak of the Rebellion, there had been certain scandals associated with the new administration of Governor Curtin, by reason of which Samuel N. Purviance, the attorney general, resigned his position. The situation was so critical that recruiting was checked and the plans for supplying funds for war purposes were blighted. At this juncture Governor Curtin appointed Mr. Meredith to the vacant attorney generalship, which he accepted, notwithstanding that his health was impaired and that the acceptance involved financial and other sacrifices. His acceptance immediately restored public confidence. He served in this office until 1867.

He was a member and president of the Constitutional Convention of Pennsylvania in 1873, but died on August 17th of that year, before its labors had been terminated. An interesting account of his life and services may be found in the Memoir of R. L. Ashhurst in the Memorial Volume of Addresses published by the Law Association of Philadelphia in 1902.

CHAPTER XLV.

HORACE BINNEY.

CHAPTER XLV

Horace Binney.

It is probable that no member of the Pennsylvania bar was as widely known throughout the United States during his lifetime as Horace Binney. He was born in Philadelphia, on the 4th of January, 1780. His grandfather, Barnabas Binney, was a shipmaster and merchant of Boston, whose ancestor, John Binney, had emigrated from Hull, in England, in 1680, and settled in Hull, Massachusetts. His father, also named Barnabas, was a surgeon in the Continental army, who settled in Philadelphia, after having been transferred to the Pennsylvania Line, in 1777, when he married Mary, the daughter of Henry Woodrow, a gentleman of Scotch ancestry.

He attended the grammar school of the University of Pennsylvania, but afterwards, upon the death of his father, he was sent to Bordentown, New Jersey. He graduated from Harvard College in 1797. After having devoted a short time to the study of medicine, and having sought employment in a mercantile house, he became a student in the law office of Jared Ingersoll, then attorney general of the State, where he was a fellow-student of John Sergeant and Charles Chauncey. He was admitted to the bar of the Court of Common Pleas of Philadelphia on March 31, 1800, and to the bar of the Supreme Court at the March term of 1802.

For six years after his admission to the bar, he had a most meager clientage, and, as he remarked afterwards, his porridge would have been very insipid if he had had to buy salt for it with what he made at the bar. But the time was not lost. He employed it largely in waiting upon the courts and watching the course of trials, a practice which he afterwards often commended to young men, assuring them that, if attentive, they would learn as much in court as they could in their offices, during the same hours, and that what they learned would be more useful to them in acquiring the art of managing causes.

In April, 1804, he was married to a daughter of Colonel John Cox, of Trenton, New Jersey, an efficient officer in the quartermaster's department during the Revolutionary War, and the union thus formed continued through the long period of sixty-one years, until her death.

In the year 1806 he was elected a member of the legislature of the State. He served as such, however, but a single year, declining a reëlection. While he was a member, one of two memorials of the Chamber of Commerce and one for the incorporation of The United States Insurance Company were committed to his charge. These brought him into association with the merchants and underwriters of the city, and so

satisfactory was his management of the trusts committed to him, that immediately after the close of his membership much professional business relating to insurance flowed in upon him. To Mr. Edward Tilghman, one of the leaders of the "Old Bar," he was indebted for his launch into this department of practice. Mr. Binney has himself given an account of his start in his most interesting sketch of three of those leaders. The case committed to his sole charge by the advice of Mr. Tilghman was Gibson vs. The Philadelphia Insurance Company, reported in 1 Binney, page 405. It was one of difficulty and involved the application of principles not familiar to most members of the profession even at the present day. The report shows that it was very ably argued by him and with success. It was the second case which he argued in the Supreme Court of the State, and it was the beginning of the large success for which he had waited so long, and for which he had made such thorough preparation. The insurance business was never, perhaps, better at any time or at any bar, than it was in Philadelphia, from 1807 to 1817, including the ten years between his substantial entrance into practice and his attainment of the full reputation and employment which he held undiminished during his continuance in professional life.

In these years, pressingly engaged as he was in professional duties, he prepared and published his six volumes of reported decisions of the Supreme Court of Pennsylvania, covering the period from 1799 to 1814. To this work he was invited by Chief Justice Tilghman, soon after his return from the legislature. That he received the invitation from such a source before he had obtained any considerable practice, and when he was only twenty-seven years old, was a very high testimonial to the confidence which his abilities, his culture, his habits and his character had won for him in the best quarters. Mr. Edward Tilghman's faith in him illustrates the respect he had gained from the leaders of the "Old Bar," whose judgment was not likely to err. Throughout the six volumes of his reports he gave irrefragable proofs of his ability to comprehend legal arguments and to restate them with clearness in a condensed form. His analysis of the facts upon which the judgments were rendered was rigid and accurate, and his head notes expressed exactly what the court decided. No complaints have ever been made that his syllabus was not sustained by the case. When the reports came from his hands they left nothing to be desired. They must always be regarded as the work of an accomplished lawyer.

After 1807 his professional engagements were very large, not only in insurance cases, but in all kinds of important business. He seemed to pass at one bound from his long apprenticeship in waiting into acknowledged leadership. He divided the business of the courts with the eminent men who, when he came to the bar, held all that was worth holding. How great his share became, and how completely he won the confidence of the business community, as well as that of his professional brethren, may in some measure be discovered by an examination of the reported decisions of the Supreme Court of the State, of the Supreme Court of the United

States and of the Circuit Court of the United States for this district. His work appears in Binney's reports, in those of Sergeant and Rawle, Rawle, Penrose and Watts, William Rawle, in Washington's Circuit Court Reports, and in those of Cranch, Wheaton and Howard. His engagements in the local courts and in his office were correspondingly large.

The war of 1812 brought with it the usual fruits of war—destruction to commerce, embarrassment to trade, rash speculation and consequent profit to the members of the bar. Unhappily their direct interests are rarely injured by national adversity. This, perhaps, is one of the "principal deductions from the general popularity of the profession, and one of the reasons why it receives more respect than love," without fault of its own. Mr. Binney shared largely in that profit, and the close of the war in 1815 found him in possession of all that the profession of law could give to its professor, whether of reputation or emolument. The eminent leaders of the bar whom he encountered at his entrance into the profession, had, in a great degree, retired from active business, and, soon after, most of them departed from life. The field was clear, and, with the exception of Mr. Sergeant and Mr. Chauncey, his constant friends, he was almost without a rival. But this caused no relaxation of his energy. The habits he had formed in college, his love of study for study's sake, and his deep-seated convictions of duty to his clients, with an ever-abiding sense of obligation to them, overcame all tendency to inertness, if any ever approached him, and he continued till the close of his professional life as heartily devoted to it, and as mindful of its claims, as he was in the first flush of his manhood.

In 1808, when only twenty-eight years of age, he was chosen a director of the first Bank of the United States. This appointment he accepted and continued to act as a director and a trustee many years. It was in the service of the bank he argued his first case in the Supreme Court of the United States. The case was The Bank vs. Deveaux et al., reported in 5 Cranch, page 61. No one can read his argument, condensed as it is in the report, without admiring its orderly arrangement, its reach and its logical power. It was the effort of a lawyer well trained and well furnished.

About the year 1830, after severer exertions than were usual, Mr. Binney's health began to be impaired, and he desired to withdraw gradually from the courts and throw off, in considerable measure, the load of business with which he was oppressed. It was this, in part, which made him willing to accept a nomination for Congress. There were doubtless other reasons that influenced him. Principal among these was the hostility of President Jackson to the Bank of the United States. His veto of the bill for its recharter in 1832, aroused the deepest feeling of its friends, who then constituted most of the business community of Philadelphia. Mr. Binney was one of the number, and his transcendent ability, together with his well known knowledge of the condition and operations of the bank, pointed him out as the best man to defend the institution in Congress. He was elected and took his seat as a member of the Twenty-third Congress on the 2d of December, 1832. That Congress was filled

with distinguished men, many of them longer trained in the public service. Mr. Binney took into it a great reputation such as few lawyers ever brought into congressional life. Much was expected from him and all that was expected was realized. If he found any equal, he found no superior. He never stooped to the arena of partisan discussions, but in the consideration of important subjects, especially that of the removal of the public deposits from the Bank of the United States, he proved himself to be a statesman of high rank and a most accomplished debater.

Declining a reëlection, he returned to Philadelphia and retired from all professional practice in the courts. In the year 1836 he went to Europe because of the ill health of a member of his family, and only once thereafter did he ever appear in any court as an advocate or a counsellor. This appearance was in the noted case of Vidal et al. vs. Girard's Executors, reported in 2 Howard, page 127, involving the validity of the trust created by Stephen Girard for the establishment and maintenance of a college for orphans. Former Attorney General Hampton L. Carson in his Sketch of Horace Binney gives the following account of the latter's services in this case:

But for the argument in Vidal et al. v. The City of Philadelphia, by which the noble trust under the will of Stephen Girard was vindicated as a public charity, it must be confessed that Mr. Binney's renown would have been confined to but narrow bounds. The student of the reports would have found imposing traces of his intellectual prowess, and tradition would have whispered his name, but to the great communities outside of his city and State he would have been a stranger. The truth is that causes of great moment, which touch vast interests and involve far-reaching principles, which lift themselves as mountains above the slightly undulating plain of ordinary litigation, are of rare occurrence, even in the experience of busy and long-lived advocates, however distinguished. Lord Eldon's reputation at the bar will rest upon his argument in Akroyd v. Smithson; Erskine's upon his exertions in defense of Stockdale and Horne Tooke; Curran's upon his splendid burst in Rowan's case in favor of universal emancipation; Pinkney's upon his brilliant rhetoric in the case of the Nereide; Webster's upon his plea in the Dartmouth College case; Choate's upon the defense of somnambulism in behalf of Tirrell, charged with murder; Stanton's upon the Wheeling bridge case; Black's upon his immortal defense of trial by jury in the Milligan case; Curtis' upon the impeachment of Andrew Johnson, and Campbell's upon his memorable assault upon monopolies in the Slaughter House cases. The same remark may be predicated of great judges. Had Marshall died before the judgments were pronounced in McCullough v. The State of Maryland, in which he upheld the constitutional authority of Congress to charter a national bank, or in Cohens v. The State of Virginia, where he sustained the right of the Supreme Court of the United States to review on appeal the final judgment af the Supreme Court of a State, what a loss there would have been even to his judicial fame! Had Taney died before the Dred Scott case arose, or had Chase been paralyzed before he uttered the famous words in Texas v. White—"an indissoluble Union of indestructible States"—how different in kind and degree would have been their legal legacies to posterity!

To fully appreciate the extent of Mr. Binney's splendid victory in the Girard will case—a victory as great as any ever won in the Supreme Court of the United States—we must recall the cause, the tribunal, the reputation of his adversary and the original attitude of the judges. Stephen Girard, a Frenchman by birth, a one-eyed cabin lad, who made his way to Philadelphia at the age of eleven, had risen successively to be shipmaster, captain, ship-owner, merchant, banker and philanthropist. Without wife or child, he proved to be a father to the fatherless. For years he was willing to be regarded as close and penurious in order to accumulate a princely fortune to be dedicated to charity, guarding his secret like some precious jewel, and then with dying hands placing it upon the brow of his adopted city to glow and scintillate forever. The only clause of the will, which was a most elaborate document drawn by Mr. Duane, giving rise to the legal controversy, was that by which sectarian religious teaching was forbidden, and clergymen of every denomination inhibited the college buildings and the grounds. Lay religious instruction was not only forbidden but expressly enjoined. The cause was brought in the Federal Court because the plaintiffs were aliens. Apart from the intrinsic interest of the question and the magnitude of the sum involved, it attracted national attention, because brought before the highest court in the nation. The cause was first argued by the venerable Walter Jones, a most eminent practitioner in the District of Columbia, on the one side, and John Sergeant for the city of Philadelphia on the other. The judges were in doubt. There were many English precedents which seemed adverse to the will, as well as the decision of Chief Justice Marshall, in Trustees of the Philadelphia Baptist Association, et al., vs. Hart's Executors, 4th Wheat., and Marshall, though dead, still exercised an irresistible sway over his own tribunal, especially over the mind of Story, who worshipped the memory and doctrines of the mighty chief justice with the ardent veneration of a Hindoo for his idol.

A reargument was ordered. The heirs secured the services of Daniel Webster, who had long been the undisputed monarch of the bar of the Supreme Court of the United States, and who declared in his celebrated defense of Christianity against the inroads of paganism and infidelity that it would be the crowning mercy of his professional career if he could succeed in defeating this alleged charity. The city turned to Mr. Binney. Yielding to the call of duty, he immured himself in his library for a year, and girded up his loins for the encounter. It has been said that he even visited England for the purpose of examining the original rolls of the High Court of Chancery with a view of overturning the precedents which had been cited. This is a mistake. He did study the Rolls as recently published in England, but did so at home, and with the result which his legal genius had inspired him to anticipate. He showed that as to the principal authority cited by the Chief Justice from one of the old books, there were no less than four different reports of it, all variant from each other, and that the character of the reporter relied upon was notoriously bad. Always thorough in his preparation and exhaustive in his examination of authorities, he never entered a court-room with a more complete and absolute mastery of his case. He even paid the strictest attention to his toilet, after the manner of Pinkney, and on the day of the trial, as we are told by an eye-witness, Henry A. Wise, showed the results of the brush and comb.

His argument will stand forever as an unique model of forensic logic. After an exordium perfect in taste, chaste and elevated in diction, he disarmed prejudice against the testator by showing the number and character of his benefactions—that no one who had the slightest expectations of his bounty, or claims upon his justice, had been forgotten—the dumb and the blind, the orphans' school, the city of Philadelphia, his employees, his relatives, even his old negro slave had been remembered. He gradually worked his way up to a definition of charity which formed the keynote of his argument—that whatever was given from a love of God, or a love of one's neighbor in the broadest and most catholic sense, was a charity. In this spirit he examined all the authorities, ancient and modern, and bore down upon his opponent with glittering spear and with a weight of learning which proved crushing and overwhelming. With infinite skill he undermined the stronghold of the heirs and blew them into the air by a well-arranged train of legal explosives. In a majestic appeal for religious toleration he vindicated the right of Mr. Girard to guard his trust from narrow and sectarian interpretation, and exclaimed "Mr. Girard was his own priest," and then, dropping his voice to a solemn tone which expressed his own sense of the responsibilities of the individual conscience, added: "As I believe every man has a right to be."

Mr. Webster's reply was manifestly inadequate. Eloquence and declamation, with but a cursory and superficial criticism of the authorities, were but sorry substitutes for legal learning and logic in a forum ruled by law. Mr. Binney's triumph was complete. Mr. Justice Story delivered the opinion of the court, 2d Howard, 127, and showed in every line how completely he had been subjugated. If it be plain to the student that Mr. Binney was incapable of making a speech such as the reply to Hayne, it is equally clear that Mr. Webster was incapable of making an argument upon a question of equity jurisprudence such as Horace Binney's.

After Mr. Binney's retirement from the bar, he continued to give opinions in his office until 1850. Many of these opinions are still in the hands of members of the bar and are preserved with almost religious care. They relate to titles to real estate, to trusts and uses, to commercial questions, and to all questions in every department of the law that are most intricate and difficult of solution. They are model exhibitions of profound and accurate knowledge, of extensive research, of nice discrimination and of wise conclusion. They have been generally accepted as of almost equal authority with judicial decision, and not infrequently a claim set up with confidence has been abandoned when it became known Mr. Binney had given an opinion adverse to it.

In the year 1835 he was invited by the Select and Common Councils of the city to deliver a discourse on the life and character of Chief Justice Marshall. The activity of his mind remained undiminished until his death. He was constantly occupied in the indulgence of his fondness for reading and study. Occasionally he made a rich contribution to the enjoyment and instruction of the public. In 1849, at a meeting of the members of the bar, convened after the death of Mr. Chauncey, and at a similar meeting in 1852, soon after the decease of Mr. Sergeant, he gave utterance to his estimate of those distinguished men with remarkable analyzation

of their mental and moral characteristics, and in words all aglow with the warmest friendship. The meeting in reference to Mr. Sergeant's death was the last occasion of his distinctive association with his professional brethren. He never again appeared at a bar assemblage. Once only afterwards did he allow himself to be prominent on an entirely public occasion. It was on the 22d day of February, 1860, when, in response to an invitation of the city councils, he read before those bodies assembled in joint meeting, Washington's Farewell Address. In addition to the members of the councils, a few invited friends were present. Mr. Binney, then eighty years of age, stood on the platform in the common council chamber, and read the entire address with a firm voice and with expressive emphasis. When he had concluded, silence ensued in the chamber, the audience evidently expecting some remarks from him. He was much affected and, after pausing awhile, he said, "And thus closes the noblest compendium of fatherly affection, patriotism and political wisdom the world has ever seen. No words of mine are fit to stand beside it." In the year 1852, at the one hundredth anniversary of the Philadelphia Contributionship for the insurance of houses from losses by fire, he delivered an address on the history of fire insurance, and upon the principles adopted by that association. Like everything which came from him, the address exhibited the completest understanding of his subject, great felicity in its mode of presentation, and a vigor and beauty of expression unsurpassable. It is read with pleasure and with profit even now. In the following year he published a valuable and suggestive article on the naturalization laws. In 1858 he gave to the public a sketch of the life and character of Bushrod Washington, a Judge of the Supreme Court of the United States, who for many years presided in this circuit with great honor to himself and usefulness to the country. In his court, Mr. Binney had very constantly appeared, in the conduct of most important causes, and there had grown up between the Judge and the lawyer mutual regard and even affectionate admiration. These feelings and sentiments found unrestrained expression in the sketch, and therein also, he delineated, with his wonted acuteness, the qualities which make up a perfect *nisi prius* judge, nowhere else better, if as well described.

In the same year (1858) he published those exquisite descriptions of three leaders of the Old Bar of Philadelphia, which are still read in this community with intense interest, though the men described belonged to a generation long gone past. The freedom of the writer from all envy or jealousy; the generous appreciation and acknowledgment of true and varied excellence; the searching analysis of intellect and character, and the graceful presentation of each subject's individuality which the descriptions exhibit, have compelled admiration alike in this country and in England, where they were reviewed by Sir John Coleridge with expressions of warm admiration alike of the sketches and of the author.

In 1857, also, he gave to the press a more extended discussion, entitled "An Inquiry into the Formation of Washington's Farewell Address," which is not only curious and interesting, but strikingly illustrative of

the character of his mind and of his habits of thorough investigation and reasoning. It is mainly a treatment of evidence, coupled with a description of conflicting probabilities. From it one who never knew him in the exercise of his profession may learn how careful and minute was his search after facts, how calmly and wisely he arranged every fact discovered, in its proper relation to all others, giving to each its due weight, how inevitably his deductions seemed to flow from his premises, and how precise and perspicuous was the language he employed. No one, I think, can rise from its perusal without a thorough conviction that its conclusions are absolutely correct, and that the opinions that prevailed before its publication were, all of them, more or less erroneous.

One other product of his thoughts he gave to the public. During the progress of the Civil War, the President of the United States, under the pressure of what seemed a real necessity, suspended the privilege of the writ of habeas corpus, without any authority given by Congress, claiming that by the Constitution, and from the nature of his executive office, he was invested with the power to suspend the privilege in cases of rebellion or invasion. As might have been expected, his act immediately called forth much unfavorable criticism, and his power to do what he did, in the absence of congressional authority, was in many quarters strenuously denied—in all quarters, perhaps, at least doubted. It was then (in 1862) that Mr. Binney turned to the consideration of the subject, and gave to the public an argument in support of the power claimed by the President, not less remarkable than the best of his earlier efforts. It was thoroughly original, and it was constructed with a force and elegance that won admiration, even where it did not command assent. It is contained in three pamphlets published successively in 1862 and 1863. They will never cease to be regarded as models of acute reasoning applied to constitutional law. To such labors and employments Mr. Binney devoted the later years of his life.

In 1865 Mrs. Binney, his companion through all his early struggles at the bar and through the period of his highest success, was removed by death, and in 1870 he suffered another severe affliction in the death of his oldest son, Horace Binney, Jr. Mr. Binney died on August 12, 1875, at the great age of ninety-five years seven months and eight days. At a meeting of the bar of Philadelphia held soon after his decease, Justice William Strong, of the Supreme Court of the United States, delivered an eulogium upon Mr. Binney's life and character, from which much of this sketch has been taken.

Mr. Binney could hardly be considered a lovable character. He was cold, reserved, unsympathetic, and utterly void of personal magnetism. He was, says Mr. Carson, without generous or other impulses, and was dominated in all his acts by his intellect. Feeling had no share in the composition of his judgments. He was exacting as a creditor. Being punctual in all his own engagements, he expected the same of others, and tolerated no excuses. While we cannot but admire his intellectual and moral faculties, the conclusion is irresistible that his personality must have been somewhat repellent.

CHAPTER XLVI.

JUDGES UNLEARNED IN THE LAW—JUSTICES OF THE PEACE.

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As we have already seen, the 4th Section of Article V of the Constitution of 1790 provided that "until it shall be otherwise directed by law," the Courts of Common Pleas should consist of not less than three nor more than four judges for each county, and the counties were divided into circuits or districts, for each of which districts a president judge was appointed. The president of the district and the judges of a county, any two of whom were a quorum, composed the Court of Common Pleas for that county. The Constitution did not require that the president judges of the districts should be learned in the law, but various acts subsequent to the Constitution so provided.

By Section 15 of the Act of February 24, 1806, 4 Sm. L., 270, it was provided that if a vacancy should thereafter happen in any county then organized, by the death, resignation or removal of any associate judge, the Governor should not supply the same unless the number of associates should be thereby reduced to less than two, in which case, or in the case of any county thereafter organized, he should commission as many as would complete that number in each county and no more.

Section 18 of the Act of April 14, 1834, P. L. 333, provided that the Courts of Common Pleas of the several counties, except the county of Philadelphia, should consist of a president judge and two associate judges. This would seem to provide for a president judge for each county, but, as a matter of fact, a president judge was appointed for each district, and the Court of Common Pleas of each county consisted of such president judge and the two associates judges appointed for the county.

By the Act of April 15, 1851, P. L. 648, which is still in force, except as modified by the Constitution of 1873, one person was to be elected to serve as president judge of each judicial district, and two persons were to be elected to serve as associate judges of each county. These associate judges were, following the former practice, unlearned in the law.

Section 5 of Article V of the Constitution of 1873 abolished the office of associate judges not learned in the law, in counties forming separate districts. Associate judges unlearned in the law are therefore now elected only in the counties constituting the following judicial districts:

The Seventeenth District consisting of the counties of Union and Snyder.

The Twentieth District consisting of the counties of Huntingdon, Bedford and Mifflin.

The Twenty-fifth District consisting of the counties of Clinton, Cameron and Elk.

The Twenty-sixth District consisting of the counties of Columbia and Montour.

The Thirty-seventh District consisting of the counties of Warren and Forest.

The Forty-first District consisting of the counties of Juniata and Perry.

The Forty-third District consisting of the counties of Pike and Monroe.

The Forty-fourth District consisting of the counties of Sullivan and Wyoming, and the fifty-first district consisting of the counties of Fulton and Adams.

In each of the counties constituting these districts, two associate judges unlearned in the law are elected under the provisions of the said Act of 1851.

Originally, the associate judges unlearned in the law seem to have exercised nearly as much authority when sitting in the county court as the district judges who were learned in the law, inasmuch as we find the two associate judges of Berks county overruling a decision of Judge Rush in 1804, and in 1799 the Supreme Court held that the associate judges of Allegheny county, who had been prevented by Judge Addison from addressing the grand jury, had a right to thus express their opinions.[1] More recently, however, the functions of these judges has been circumscribed, as will appear from the following opinion of the Supreme Court[2]:

Whether the mandamus prayed for in the court below should have issued was a pure question of law. On undisputed facts the learned president judge dismissed the petition for it, but his two associates, unlearned in the law, filed what they called a dissenting opinion, in which they held that the prayer of the petition should be granted, and they thereupon directed a writ of peremptory mandamus to issue. They were elected as judges unlearned in the law, and, if men of ordinary intelligence, ought to have known that it was never contemplated by the Constitution that they should ever set up their judgment against that of the head of the court on a matter of law. They were never intended for any such purpose, and we have so said in the rare instance of judicial impropriety of which they are guilty. In Syracuse Pit Hole Oil Co. v. Carothers, 63 Pa. 379, the late Judge Trunkey, of this court, while presiding in a lower court, discharged a rule for a new trial. Subsequently his two lay associates made it absolute. In reversing and setting aside the order granted by the two lay judges, he said: "It was a step in the wrong direction for associates to interfere in a matter of this kind, and it is to be hoped that the example will not be followed. If such a proceeding could be tolerated, litigation would but begin where it ought to end, with the judgment." Another case to which reference may be made is Glamorgan Iron Co. v. Snyder, 84 Pa. 397. There the two lay judges undertook to overrule the action of the trial judge on a motion for a new trial. In

[1] Com. v. Addison, 4 Dallas Reps., 225 (1801).
[2] Com. v. Lenhart, 241 Pa., 129 (1913).

reversing their action it was appropriately said: "For many purposes the associate judges of the several counties of the Commonwealth have formed a most useful class of public officers. In the absence of the president judge, their services have been almost indispensable where formal judicial action in vacation has been required in the current practice of the courts. Wherever two or more counties have constituted a district, their local knowledge has been found to be an essential aid in adjusting questions relating to the values of property, to appointments of minor officers, to bail, and to the selection of viewers, appraisers and inquests in the Orphans' Court and Quarter Sessions. In the minor details of the business of the Common Pleas also, president judges have been able to rely safety on their judgment, integrity and business experience. But in the conduct of jury trials they have usually not sought to interfere, and usually their interference has not been invited. The purely legal business of a court of original jurisdiction must be subject to the control of a single judge, if efficiency, promptitude, and official responsibility are worth maintaining. If the deliberately formed purpose of a president judge may be thwarted and overturned by action on the part of his associates, which must necessarily be ill-considered and may often be prejudiced, rules of law will be subordinated to individual caprice. The president is the constitutional head of the court, under responsibilities to the community which a court of review can always enforce, and hedged around by duties and obligations for the performance of which no other guaranty is needed than his regard for his own professional reputation. The fact that in Pennsylvania there has been no failure in the due discharge of those duties and obligations, is adequate proof that the exercise of supervisory and appellate jurisdiction by associate judges is, to state the conclusion in the mildest form, entirely superfluous.

In the early days of the colony, and afterward in the older communities, the character of the judges unlearned in the law was high, but after the Revolution, in the new counties of the Commonwealth, men of inferior character were often appointed justices. McMaster in his "History of the People of the United States" thus describes the judges unlearned in the law during the early administration of McKean:

The president judges were men of ability and well read in the law. But no such qualifications were thought necessary in the county judges, who were in general laymen, and the worst kind of laymen, small politicians. The drunkenness, the brawling, the neglect of duty, the airs which these men assumed, and the petty spite they exhibited toward such political opponents as came within their power, made them more hateful to the people than the excise collector or the assessors of the direct tax. They were all Federalists. To complain of them to a Federal governor and a Federal senate would have been useless. But the moment Thomas McKean was chosen governor, the moment the Senate passed into Republican hands, complaints and demands for relief came up from every part of Pennsylvania. Two, during the heated campaign of 1800, had sat quietly on the bench while a clerk of quarter sessions was well pummelled by a political enemy. On another occasion a judge had quit the bench, gone down into the crowd, and engaged in a fist fight with a man he claimed

had insulted him. Two others had prevented the sitting of a court by staying away. Still another had forged a name to the acknowledgment to a deed. In Wayne county a judge had, by main strength, dragged a colleague from the bench and kept him from attending Court. As a class, they were well described in a petition to the legislature, which declared them to be destitute of all legal knowledge, burdensome and expensive. The justices of the peace seem to have been worse yet. Many were tavern-keepers. A few were charged with keeping houses of ill-fame. That they were grossly ignorant and grossly unjust cannot be doubted.

Prior to the Revolution, as we have seen, justices of the peace were appointed generally for each county, and these justices, or a quorum of them, constituted the several courts of the county.

Section 30 of the Constitution of 1776, provided that two or more persons should be elected by the freeholders of each ward, township or district, as the law should thereafter direct. The Act of February 5, 1777, IX Stats. at Large, p. 41, provided for the election of two justices of the peace for each ward in the city of Philadelphia, four for the united district consisting of the District of Southwark and the townships of Moyamensing and Passyunk, and four justices for the Northern Liberties. Section 2 provided for the division of the counties of Philadelphia, Bucks, Chester, Lancaster, Berks, York and Northampton into certain districts for each of which two justices of the peace were to be elected. Section 4 provided that two justices should be elected for each township in the counties of Cumberland, Bedford, Northumberland and Westmoreland, but where a county seat existed in any district, not having the charter right to elect burgesses, the freeholders of such district should elect six justices for such district.

This act was amended by the Act of March 31, 1784, XI Stats. at L., p. 306, and that act in turn by the Act of March 4, 1786, XII Stats. at L., p. 171, and the said Act of 1786 was amended by the Act of March 4, 1786, XIII Stats. at L., p. 9.

Article V, Section 10 of the Constitution of 1790 provided that the Governor should appoint a competent number of justices of the peace in such convenient districts in each county as were or should be directed by law, and it would seem that he appointed justices for the districts established under the foregoing acts, but by the Act of April 4, 1803, P. L. 659, the commissioners of the several counties were directed to lay their counties out into districts for the appointment of justices of the peace, the number of such districts not to exceed a certain number stipulated for each county in the act, and justices were thereafter appointed for such districts, and the Act of March 14, 1814, P. L. 96, similarly provided for the redistricting of a number of counties named therein, for the appointment of justices of the peace.

After the establishment of judicial districts, and the provision for the appointment of associate judges in each county, under the Constitution of 1790, the justices of the peace no longer sat in the county courts, although

the associate justices had the powers of justices of the peace, and by Section 43 of the Act of April 25, 1850, P. L. 576, the offices of associate judge and justice of the peace were declared to be incompatible.

Justices of the peace continued to be appointed in the manner above set forth until the passage of the Act of June 21, 1839, P. L. 376, which is still in force, and provides for the election of two justices of the peace for each township, two for each borough not divided into wards, and one for each ward in a borough which is so divided.

The Act of March 20, 1810, 5 Sm. L., p. 161, provided elaborately for the jurisdiction of justices of the peace, and a large part of said act is still in force.

CHAPTER XLVII.

JUSTICES OF THE SUPREME COURT SINCE 1850.

Supreme Court of Pennsylvania

J. Hay Brown *D. Newlin Fell* *S. Leslie Mestrezat*
William P. Potter *James T. Mitchell* *John P. Elkin*
John Stewart

CHAPTER XLVII.

Justices of the Supreme Court Since 1850.

Jeremiah Sullivan Black was the first chief justice of Pennsylvania to be elected to that office. The national reputation gained through his activities in the field of national politics has in a measure dwarfed his reputation as a judge.

Judge Black was born in Stonycreek township, Somerset county, on January 10, 1810, a son of Henry Black, who was a member of Congress at the time of his death in 1842. The son was educated in the common schools and at an academy in Fayette county. Before beginning the study of the law he is said to have translated into English verse nearly all the classics. He studied law with Chauncey Forward, at Somerset, and was admitted to the bar before he was of age and was appointed deputy attorney general for Somerset county.

In 1842, in his thirty-second year, he was appointed president judge of the Sixteenth Judicial District and served with reputation in that office until December, 1851, when he was elected to the Supreme Court, and having drawn the shortest term was commissioned as chief justice for three years from the first Monday in December, 1851. He was reëlected to the Supreme Bench in 1854, but resigned in 1857 to accept the office of Attorney General of the United States in the administration of President Buchanan. He was later appointed Secretary of State by Buchanan, and still later he was nominated a judge of the Supreme Court of the United States, but his confirmation was prevented by the withdrawal of the Southern Senators. At the termination of his services in the Cabinet he was appointed reporter for the Supreme Court of the United States, serving in that position only long enough to publish two volumes of reports. His practice on leaving Washington was most extensive, his clients being drawn from all parts of the United States. He was a member of the Constitutional Convention of Pennsylvania of 1873. He published many articles on public questions and was remarkable for skill in controversy. He died at his home in York, Pennsylvania, on August 19, 1883.

Ellis Lewis, fifth chief justice of the Supreme Court, was born in Lewisberry, York county, in 1799, from Welsh, Irish and English stock. He was one of four brothers, three of whom became lawyers.

He was left an orphan at nine years of age, and a few years afterward he entered a printing office, and was employed later as a printer in an office in New York. From New York he returned to Lewisberry and studied medicine for a time, going from thence to Baltimore, where he

attempted to secure employment as a printer. Not succeeding, he went to Williamsport, Pennsylvania, where in 1820 he began the study of law, and was admitted to the bar in 1822. In 1823 he was deputy attorney general for Lycoming and Tioga counties. He afterward removed to Bradford, where he soon established himself in a lucrative business.

He was elected to the legislature in 1832, and in 1833 was appointed attorney general by Governor Wolfe. In the fall of that year he resigned that office, having been appointed president judge of the Eighth Judicial District, then composed of the counties of Northumberland, Lycoming, Union and Lancaster. He served in that capacity for ten years, when he was appointed president judge of the Second Judicial District, then consisting of the city and county of Lancaster. During his incumbency of this office he was professor of law and medical jurisprudence at Franklin College.

In 1851 he was elected a judge of the Supreme Court under the Constitution of 1838 and the amendment thereto of 1850, and drew a term of six years. This being next to the shortest term, which was drawn by Judge Black, Judge Lewis succeeded him and became chief justice from the first Monday of December, 1854, serving as chief justice until December 7, 1857.

Mr. Lewis was appointed one of the commissioners to revise the Criminal Code passed in 1860. He died in Philadelphia on March 19, 1871. He is described as a slender but agile person of middle height, with black hair and a dark, deep-set penetrating eye, indicative of great kindness, spirit and quickness of apprehension. David Paul Brown, writing at a time when Lewis was chief justice, said of him:

> He is perhaps too much of a politician; but that is not his fault so much as the fault of the circumstances into which he has been thrown, by those accidents which are ever attendant upon the wayward footsteps of self-taught men. But, politician as he is, no one shall justly assert that he ever was a political strategist, or deny that, in all his relations, private or public, political, professional, or official, he has always proved a faithful and an honest man. He ever bears in mind the doctrine of Socrates, that "three things belong to a judge: to hear courteously, consider soberly, and give judgment without partiality."

Walter H. Lowrie was born in Allegheny county on March 31, 1807, and was admitted to the bar at Pittsburgh on August 4, 1829. He was appointed judge of the District Court of Allegheny county in August, 1846, to succeed Judge Grier, appointed to the Supreme Court of the United States. Judge Lowrie was elected a judge of the Supreme Court in October, 1851, drew the term of twelve years, and on December 7, 1857, became chief justice by rotation, serving in that capacity until December, 1863. The Thirtieth Judicial District consisting of Crawford county was created in 1870, and Judge Lowrie was elected president judge of the new district in the fall of that year, and presided therein until his death at Meadville in November, 1876, in the seventieth year of his age.

Chief Justices

THOMAS McKEAN

JAMES THOMPSON

GEORGE W WOODWARD

George W. Woodward was born on March 26, 1809, in the village of Bethany, Wayne county. He received an academic education, studied law with Garrick Mallary, of Wilkes-Barre, and was admitted to the bar of Luzerne county at the August term, 1830. In the spring of 1831, Mr. Mallary having been appointed president judge of the district consisting of Northampton, Lehigh and Bucks counties, transferred his entire professional business to Mr. Woodward. The latter continued in the enjoyment of an extensive practice at Wilkes-Barre until 1841, when he was appointed president judge of the Fourth Judicial District, then consisting of the counties of Huntington, Mifflin, Centre, Clearfield and Clinton. The two counties first named were, however, taken from the district in 1842. In 1845 he was nominated by President Polk an associate justice of the Supreme Court of the United States, but failed of confirmation. On the expiration of his term of office in the spring of 1851, he declined a nomination to succeed himself and returned to practice at Wilkes-Barre, but upon the death of Judge Coulter in 1852 he was appointed his successor, and at the fall election in that year was elected to the Supreme Court.

He was a member of the convention which prepared the Constitution of 1838, and prominent in its deliberations. He became chief justice by rotation on September 7, 1863, and served until 1867. He was the Democratic candidate for Governor in 1863 against Andrew G. Curtin, and represented the Twelfth Congressional District in the Fortieth and Forty-first Congresses. He was a delegate at large to the Constitutional Convention of 1873. He died at Rome, Italy, on May 10th, 1875.

John Colwin Knox was born on the 4th of November, 1820, at Knoxville, in Tioga county. He was appointed president judge of the Tenth Judicial District in 1848, and served until 1851, when judges became elective. In that year he returned to his home in Tioga county, where he was elected judge of the Eighteenth Judicial District. While serving in this capacity, on May 23, 1853, he was appointed to the Supreme Bench to fill the vacancy caused by the death of former Chief Justice John Bannister Gibson, and served thereon until 1857, when he resigned to accept the office of attorney general, in which office he served until January, 1861, in which year he removed to Philadelphia to practice law. He was one of the commissioners appointed in 1858 to revise the criminal laws of the Commonwealth. Shortly after removing to that city his mind failed, and he was removed to the State Asylum at Norristown, where he continued until his death on August 28, 1880.

James Armstrong, who served a brief period on the Supreme Bench in 1857, was appointed on the 6th of April of that year to fill the vacancy occasioned by the resignation of Jeremiah S. Black. He was the leader of the Lycoming county bar when appointed. He served only until the first of December, 1857, and died in 1867.

James Thompson was born at Glades Mills, Butler county, in 1805, and was admitted to the bar of Venango county in 1826. He was elected to the legislature in 1832, and again in 1834, when he was chosen speaker

of the House. He was appointed president judge of the district court established for Crawford, Warren and Venango counties in 1836 and served in that capacity until 1845. He was elected to Congress in 1844, and again in 1846 and 1848. In 1854 he was elected to the legislature from Erie county, and was elected an associate justice of the Supreme Court in 1857, and serving as chief justice, by rotation, from 1867 to 1872. He died on January 28, 1874, in the court room, while engaged in the argument of a case before the Supreme Court. Memorial addresses delivered at a meeting of that tribunal held on Thursday, January 29, 1874, may be found in 72 Penna. Reports, p. XIII.

William Strong was elected to the Supreme Court in 1857. A sketch of his life will be found in the chapter dealing with Associate Justices of the Supreme Court of the United States appointed from Pennsylvania.

William A. Porter, a son of former Governor Porter, was born in Huntingdon county, Pennsylvania, on May 24, 1821. He graduated at Lafayette College, and was admitted to the Philadelphia bar on April 26, 1842. In the same year he was appointed to fill a vacancy in the office of sheriff of Philadelphia county, and was afterwards deputy attorney general for that county. He was elected city solicitor of Philadelphia in 1855, and was appointed an associate justice of the Supreme Court on January 20, 1858, to fill the vacancy occasioned by the resignation of John C. Knox, but resigned his seat on the 18th of October, 1858. After his resignation he continued in the active practice of the law until his death on June 28, 1886. From 1874 to 1876 he was one of the commissioners to distribute the funds arising from the Alabama claims. His "Memoir of Chief Justice Gibson" has been referred to in a previous chapter.

Gaylord Church, who served a brief period upon the Supreme Bench by appointment in 1858, was born in Oswego, New York, on August 11, 1811. His parents removed to Mercer county in 1816, where he attended the Mercer Academy, studied law with John J. Pearson, Esqr., of Mercer, afterwards president judge of the courts of Dauphin county, and was admitted to the bar in 1834, in which year he removed to Meadville. He was appointed deputy attorney general for Crawford county in 1837, was elected to the legislature in 1840 and 1841, was appointed president judge of the Sixth Judicial District in 1843, and served in that capacity until the office became elective. He was appointed to succeed William A. Porter, resigned, upon the Supreme Bench, on October 18, 1858, and served until the first Monday of December of that year, when he was succeeded by John M. Read, elected in the October preceding. He died in Meadville in September, 1869. His eldest son, Pearson, was elected president judge of the Thirtieth Judicial District in 1877. Judge Church is said to have been an able lawyer and an efficient and learned judge.

John Meredith Read was born in Philadelphia, in 1797, the son of John Read, who was city solicitor in 1810-11 and 1818-20. John Meredith was a member of the legislature from the city of Philadelphia in 1823-25, city solicitor from 1830-31, and United States District Attorney from 1837-41. He served as attorney general from January, 1845, to June 23,

Geo. Sharswood

1846, and was elected to the Supreme Bench in 1858, serving as chief justice from 1872 to 1873. He died on November 29, 1874. The following obituary notice of Mr. Read is taken from an issue of the "Law Times," published in London, in 1875. It will probably be news to the American reader that Mr. Read was ever prominently mentioned for the presidency:

The Honorable John Meredith Read, LL. D., Chief Justice of Pennsylvania, who died on the 25th of November last, was the head and representative of a rather large and distinguished branch of the family of Read or Reade, Baronets, formerly of Shipton Court, Oxfordshire, being the great-great-grandson of John Read, Esqr., a son of an Irish gentleman of property, who becoming one of the earliest settlers in America purchased from his fellow countryman Lord Baltimore a manorial tract of land in the Province of Maryland. He was the great-grandson of Honorable George Read, who having been attorney general became one of the fathers and founders of the American Republic, and indeed was one of the six individuals [from Maryland] who signed the Declaration of Independence. Judge Read, who was born toward the end of the last century, was the son of Honorable John Read, an eminent lawyer at Philadelphia. His mother was Martha, the eldest daughter of Samuel Meredith, brigadier general, a member of Congress and an intimate friend of George Washington. He was educated at one of the American colleges, and called in due course to the bar at which he practiced with much success. He arose gradually to become a judge and eventually Chief Justice of Pennsylvania. He was known as one of the most eminent jurists that America has ever produced, and was more than once prominently named as one of the most probable and logical candidates for the Presidency of the United States.

Daniel Agnew was born at Trenton, New Jersey, on January 5, 1809. Soon after his birth, his family removed to Pittsburgh, where he graduated from the Western University of Pennsylvania with the class of 1825. He studied law with Henry Baldwin and W. W. Fetterman and was admitted to the bar on April 21, 1829, removing soon afterwards to Beaver, where he resided during the remainder of his life. He was a member of the convention which prepared the Constitution of 1838, and a presidential elector in 1848. On July 11, 1851, he was commissioned president judge of the Seventeenth Judicial District, then consisting of the counties of Beaver, Butler, Lawrence and Mercer. In the fall of that year he was elected to succeed himself for a term of ten years, and was reëlected in 1861. He was elected a justice of the Supreme Court in 1863 and commissioned for a term of fifteen years from December 1st of that year. He became chief justice by rotation on November 25, 1873, and served to January 1, 1879, when he retired. In 1887 he published a history of the settlement and land titles of Northwestern Pennsylvania. He died at Beaver, on March 9, 1902.

George Sharswood was born in Philadelphia, in 1810, and graduated at the University of Pennsylvania with high honors in 1828. He studied law with Joseph R. Ingersoll, and was admitted to the bar in 1831. He

was a member of city council for some years, and a member of the General Assembly in 1837-38 and 1841-43. On April 2, 1845, he was appointed associate judge of the District Court for the City and County of Philadelphia, and on February 1, 1848, as president judge of that court. When judges became elective in 1851 he was elected to succeed himself in that office, and was reëlected in 1861, serving until 1867, when he was elected to the Supreme Court. He became chief justice on December 4, 1878, and served until the first Monday of January, 1883. He died May 28, 1883, at the age of seventy-two years.

Judge Sharswood published a number of works, among which are his editions of "Blackstone's Commentaries," "Byles on Bills," "Starkie on Evidence," "Russell on Crimes," and "Smith on Contracts." He was professor of law at the University of Pennsylvania from 1850 to 1868. Besides the works above mentioned, he published "Professional Ethics," "Popular Lectures on Commercial Law," and "Lectures Introductory to the Study of the Law." John G. Johnson in his "Reminiscences of the Philadelphia Bar" refers to Judge Sharswood as follows:

Presiding in the court in banc, Judge Sharswood was a great chief. On rule days, many cases were disposed of with unsurpassed speed and almost unerring judgment. Few, unfortunately, can now recall him disposing of an argument in a few terse words, at the same time shooting, with a peculiar action of his fingers, toward the opposing counsel their paper books. A great deal of value was learned by those who there attended.

In a trial he was without a peer. Presiding always with dignity, he was the personification of justice—justice not blind, but alert and comprehending. Questions as to the admission or rejection of testimony were easily and quickly disposed of, for he was a master of the rules of evidence. Witnesses were never interfered with so long as their manner was respectful and their testimony relevant. While no one seemed to be hurried, everything progressed with great rapidity. In his court room all seemed and were conscious they were in a temple of justice—of impartial justice.

His charges to juries, devoid of all partisanship, were models of excellence. They were told the exact point or points in dispute. The evidence presented by the opposing sides was marshaled with the utmost fairness and completeness of statement. Irrelevant matter dropped like chaff from a sieve. It was hardly possible not correctly to appreciate and understand the merits of a case thus presented. The heat and prejudice engendered by the trial and by the speeches disappeared. The duty of the jury was made to appear so clearly that few were brave enough to incur the dishonor of failing to perform it. Verdicts were rendered "in accordance with the evidence," not because of the personality of the judge so much as because of his being impersonal—a minister of justice.

Owing to some intestinal trouble, Judge Sharswood was almost constantly in pain; but, saving by a frequent rapid walking to and fro behind the bench, he showed it as little as the Spartan the gnawing of the fox. He was even-tempered, gentle and courteous, though firm, and impatient of any waste of time.

His elevation to the Supreme Court was most deserved, and he proved

a useful judge, always sound and wholesome in the opinions he delivered and in the decisions in which he joined. His opinions were clear and concise. To him the law was a sacred inheritance. In the course of an argument in the Appellate Tribunal, he sometimes interrupted with questions; but, like those of Justice Strong, of Jessel, and of the present Chief Justice of the United States, they tended to bring the argument to a point and to an end. Each of these four great masters of judicial interrogation, by the interrogation itself, not rarely have been able to convince advocates of the untenability of their positions. It is questioning of this character which compels counsel carefully to study a case in advance lest he slip, like an incautious pedestrian on a banana peel.

Judge Sharswood's kindness to the young men of the bar very greatly endeared him to them. He was ever ready to help them when, through inexperience, they found themselves unable to take care of themselves. On one occasion a young lawyer who had been entrusted with a case involving a right of way, in which he was opposed by two lawyers greatly his superior in experience and learning, and which he had prepared until his brief contained citations from or references to every relevant and possibly irrelevant case upon the subject ever decided, was suddenly met by an objection to the admission of a road book because of its being a copy and not an original record. His visions of victory were changed to dire apprehension when the judge stated he feared he must sustain the objection and reject the book. After the recess hour, which occurred at this point, the judge, however, called attention to an act of Assembly which in the interim he had hunted for and found, providing for the substitution of the copy for a lost original, and the day was saved. As is often the case, the lawyer gained all the benefit of the victory he had not won, and much future good accrued to him therefrom. The occurrence was one of many such.

Judge Sharswood was tall and, though he stooped a little, was impressive of appearance. His eye was bright and his smile one of blended sweetness and force. Though sedentary of habit, he was fond of attending the meetings of the Saturday evening dining clubs, where he was usually surrounded by the younger men. He went to his grave carrying with him the respect and love of all who had known him.

Henry Warren Williams was born on January 20, 1816, in Groton, Connecticut, and graduated at Amherst College with the class of 1837. He removed to Pittsburgh in the winter of 1838, entered the office of Walter H. Lowrie as a student, and was admitted to the bar on May 24, 1841. He was elected judge of the District Court of Allegheny County in 1851, and on the expiration of his term in 1861 he was reëlected without opposition. He was a candidate for judge of the Supreme Court in 1867, but was defeated by George W. Sharswood by a plurality of less than one thousand votes. On the elevation of William Strong to the bench of the Supreme Court of the United States, Judge Williams was appointed to fill the vacancy occasioned by his resignation, on October 26, 1868, and was elected in 1869 to succeed himself. He died in Pittsburgh on February 19, 1867, while still in office. At a meeting of the Supreme Court on February 20, 1877, Chief Justice Agnew in announcing his death said in part as follows:

He was born and reared on a farm in Connecticut, and received his primary education there. After graduating at Amherst College he came to Pittsburgh, Pennsylvania, about the year 1839, where he soon became engaged in teaching the classics in a select school, kept (if I remember aright) by his friend C. B. M. Smith, Esq., a native of Connecticut also, who, like himself, was a student at law, both becoming afterward prominent in their profession.

Judge Williams, I think, studied law under the late Chief Justice Walter H. Lowrie, then a leading practitioner in Pittsburgh. I know he became his partner, and continued so until Judge Lowrie was appointed to the bench of the District Court of Allegheny county. Afterwards Judge Williams became the leading partner in a firm composed of himself and the late William M. Shinn, Esq. In October, 1851, at the election under the amendment to the Constitution of 1850, he was elected one of the judges of the District Court, and sat with the late Walter Forward, who was chosen president. Judge Williams filled that position with great acceptability and credit. The nisi prius and before a jury was his forte, and greatly preferred by him. He has often said to me that he loved to begin a cause, and going step by step with the evidence, build it up from the foundation. His mind was peculiarly receptive and retentive of facts, and his memory one of the most tenacious. He seemed never to forget a case he had once heard; nor was this peculiar adaptation to the trial of causes at all destructive of his power of analysis and sound judgment. He seized the leading points quickly, and with a strong grasp. His oral arguments and his charges were always clear, pointed, discriminating and forcible. He was reëlected to the district bench, and was far in his second term when he was appointed by Governor Geary in the latter part of October, 1868, to fill the vacancy on our bench caused by the resignation of Judge William Strong. He took his seat immediately, at Pittsburgh, the court being then in session there. In the autumn of 1869 he was elected by the people, and continued in service, with occasional interruptions of sickness, until the third or fourth of January, 1876, when he left for home, as I have stated. Our Brother Williams was a man of great probity and firmness of character, of conscientious convictions, and strict notions of duty. Of the old New England stock, he was reared and continued to live a consistent member of the Presbyterian church, siding with the New School and yet coming into the union with the Old School with satisfaction. In purity and singleness his mind was especially conspicuous, swerving neither to the right nor to the left, so far as he knew himself. This was eminently so in the performance of his judicial duties. In consultation he was of great assistance to his brothers, his broad views and vigorous logic making his judgments valuable aids to correct conclusions. But it was not by these qualities alone he became endeared to us. His was a genial and kindly nature, filled with wit and good humor, poured out often in a sonorous voice, and with a liberality which made his intercourse enjoyable. We have, on like occasions, listened with sorrow to the announcements of the deaths of those who had sat on this bench; but this is the first time, since the death of Judge Gibson, in 1853, that the bench lost a member by death.

Ulysses Mercur was born at Towanda, Bradford county, on August 12, 1818. By an arrangement with his father, Henry Mercur, a man of

moderate means, he took in advance a portion of his father's estate with which he was enabled to enter Jefferson College, from which he graduated with honor. While at college he added to his labors a year's study of the law, under Thomas M. T. McKennan, one of the ablest lawyers at the Washington county bar, who was afterwards Secretary of the Interior. On his return to Towanda, he continued the study of the law under Edward Overton, Esqr., an eminent lawyer of Bradford county, and was admitted to the bar in due course. In 1850 he married Miss Sarah Davis, a daughter of General John Davis, of Bucks county, by whom he had a family of four sons and one daughter.

His learning, industry and perseverance eventually brought him to the leadership of the Bradford county bar, where he was for fifteen years an active and successful practitioner. On the resignation of Judge Wilmot in 1861 to take his seat in Congress, where he became famous as the author of the Wilmot Proviso, Mr. Mercur became his successor as president judge of the Thirteenth Judicial District, in which capacity he served until 1863, when he was elected to Congress, and reëlected for three terms.

While serving his fourth term, he was elected to the Supreme Bench of Pennsylvania in 1872 to succeed Chief Justice Thompson, and on the expiration of the term of Chief Justice Sharswood in January, 1883, became chief justice of that court. He died while holding that position, on June 6, 1887, being the first chief justice to die in office since the decease of Chief Justice Tilghman. The proceedings of the Supreme Court on the occasion of his death may be found in 116 Pennsylvania State Reports.

Isaac Grantham Gordon was born in Lewisburg, Union county, on December 22, 1819. He studied law, and was admitted to practice in Union county in April, 1843. In the same year he removed to Curwensville, Clearfield county, where he became associated with George R. Barret, Esqr. He removed to Brookville, Jefferson county, in 1846. He represented the district composed of the counties of Jefferson, Clearfield, Elk and McKean in the General Assembly in 1860 and 1861, and served as chairman of the judiciary committee of the House. He served by appointment in 1866 as president judge of the Twenty-eighth Judicial District, then created, consisting of the counties of Mercer and Venango. He was elected to the Supreme Bench in 1873, and became chief justice in 1887, retiring from the bench in 1888. He died at Brookville, on September 4, 1893.

Edward M. Paxson was born at Buckingham, Bucks county, on September 3, 1824, and received his education at the Quakers' schools. When but eighteen years of age he founded the "Newtown Journal," at Newtown, Bucks county, which became prosperous and influential under his management. In 1847 he sold his establishment at Newtown, and founded the "Daily News," at Philadelphia, which he disposed of the next year, and then entered the law office of Henry Chapman, of Doylestown, as a student. He was admitted to the bar of Bucks county in April, 1850, and removed to Philadelphia two years later, where he began the practice of

his profession, and soon reached a high position at the bar. On the resignation of F. Carroll Brewster from the bench of the Court of Common Pleas in 1869 to accept the attorney generalship, Mr. Paxson was appointed to fill the vacancy, and subsequently elected to succeed himself. In 1874, at the first election under the new constitution, he was elected to the Supreme Bench, and became chief justice by seniority on the first Monday in January, 1889. On February 18, 1893, having been appointed receiver of the Reading Railroad Company by the Circuit Court of the United States, he resigned from the bench. He died on October 12, 1905.

Warren J. Woodward was born in Wayne county, in 1819. His grandfather was a judge of that county, his father prothonotary, and his uncle, George W. Woodward, a common pleas judge and afterwards a justice of the Supreme Court. He received an academic education, and before being admitted to the bar had taught school and served on the staff of a prominent Philadelphia paper. He was admitted to the bar of Luzerne county in 1842, and soon acquired a considerable local reputation. In 1856 he was appointed president judge of the Twenty-sixth Judicial District created in that year, consisting of the counties of Columbia, Sullivan and Wyoming. He was elected to succeed himself at the general election following, which position he resigned in 1861 to accept the president judgeship of the Twenty-third District, to which he was reëlected after the termination of his first term. He was elected an associate justice of the Supreme Court on November 2, 1874, and died on September 25, 1879, in the sixtieth year of his age.

James Patterson Sterrett was born on November 7, 1822, in Tuscarora Valley, Juniata county, and graduated at Jefferson College with the class of 1845. He studied law at Carlisle and afterwards at the University of Virginia, and was admitted to the bar of that State in 1848. He then removed to Pittsburgh, where he was admitted to the Allegheny county bar on June 9, 1849, and practiced until January 4, 1862, when he was appointed president judge of the courts of Allegheny county. At the election of 1862 he was elected to the same office, and reëlected in 1872. He served until February 26, 1877, when he was appointed an associate justice of the Supreme Court to succeed Henry Warren Williams. He served under this appointment until the first Monday of January, 1878, when he retired, having failed to be elected at the election of 1877. He was, however, elected in 1878, and on January 20, 1893, he succeeded Edward M. Paxson as chief justice. He died at Philadelphia, on January 22, 1901.

John Trunkey, elected an associate justice of the Supreme Court on November 7, 1877, was born in Ohio on October 26, 1828. His grandfather, Charles Tronquet, a French emigrant, settled in Connecticut about 1789. His children emigrated to Ohio, where they accepted the English pronunciation of their name and changed the orthography of the same to Trunkey. He received an academic education, entered the office of Samuel Griffith, Esqr., of Mercer, Pennsylvania, in 1849, and was admitted to the bar in June, 1851, and became associated with his preceptor in the practice of law.

In 1866 he was elected president judge of the Twenty-eighth Judicial District of Pennsylvania, consisting of the counties of Venango and Mercer. He is said to have been a model nisi prius judge. He was elected for a second term, but had hardly entered upon the same before a vacancy on the bench of the Supreme Court was caused by the death of Associate Justice Williams, and Trunkey was elected as his successor on November 7, 1877. He was prominently mentioned for nomination as the Democratic candidate for governor in 1882, but declined the same. Having been in failing health for some time, he went abroad for rest and medical treatment in the summer of 1887, and died in London, on June 24, 1888.

Henry Green was born in Warren county, New Jersey, about two miles from Easton, Pennsylvania, on August 29, 1828, and graduated at Lafayette College in September, 1846. He was admitted to the bar of Northampton county in September, 1849. In 1851 he entered the law office of Andrew H. Reeder, and afterward became a partner with Mr. Reeder, in which he continued until the death of the latter in July, 1864. He continued to practice at Easton until 1879, when he was appointed to the Supreme Court of Pennsylvania to fill the vacancy occasioned by the death of Warren J. Woodward. He was nominated to succeed himself in 1800, and duly elected in the fall of that year. He was a member of the Constitutional Convention of 1873. He served upon the Supreme Bench until his death in 1900, having succeeded to tthe chief justiceship on the retirement of Chief Justice Sterrett in 1899.

Silas M. Clark was born in 1834, and graduated at Jefferson College in the class of 1852. He read law with William M. Stewart, of Indiana, Indiana county, and was admitted to the bar of that county in 1857, when he became associated in practice with his former preceptor. He was a member of the Constitutional Convention of 1873. He was a leading member of the bar and in active practice when he was elected in 1882 on the Democratic ticket an associate justice of the Supreme Court. He died at Indiana, on November 20, 1891, while in office, and before succeeding to the chief justiceship.

Henry W. Williams was born in Susquehanna county, on July 30, 1830. He was educated in the common schools and Franklin Academy, and began the study of law with E. B. Chase, of Montrose. He went to Wellsboro in 1852, where he continued his legal studies, and was admitted to the bar of Tioga county in 1854. He was appointed additional law judge of the Fourth Judicial District in 1865, and at the expiration of his term was reëlected. He succeeded to the president judgeship of the district in 1871 and served until August 19, 1887, when he was appointed to the Supreme Bench to fill the vacancy occasioned by the death of Chief Justice Mercur, and was elected to succeed himself in the fall of that year. He died while in office, on January 25, 1899.

Alfred Hand was born at Honesdale, on the 26th of March, 1835, and graduated from Yale University with the class of 1857, in which year he began the study of the law at Montrose, and was admitted to the bar on November 21, 1859. He removed to Scranton in 1860, where he prac-

ticed until his appointment as president judge of the Eleventh Judicial District in March, 1879. When Lackawanna county was constituted the Forty-fifth Judicial District, he was transferred thereto, and was subsequently elected judge for the term of ten years from January, 1880. While serving in this capacity he was appointed on July 31, 1888, to the Supreme Bench to fill a vacancy occasioned by the death of Judge Trunkey, and served until the first Monday of January, 1889. Judge Hand has been prominently identified with the public and charitable institutions of Scranton. He died at Scranton, on May 24, 1917.

Joseph Brewster McCollum was born on September 28, 1832, in Bridgewater township, Susquehanna county, and was educated in the common schools and Harford Academy. He studied law at the State and National Law School at Poughkeepsie, New York, afterwards entering the office of Ralph B. Little, of Montrose, and was admitted to the Susquehanna county bar at the August Term in 1855. After his admission he was for a year in a law office in Geneva, Illinois, afterwards returning to Montrose. After twenty years successful practice at that place he was elected president judge of the Thirty-fourth Judicial District in 1878. He was elected to the Supreme Court in 1889, and on the death of Chief Justice Green on August 16, 1900, succeeded him as chief justice. He died in 1903.

James Tyndale Mitchell was born in Belleville, Illinois, on November 9, 1834. At the age of seven years he was sent to Philadelphia, where he graduated from the Central High School in 1852, afterwards entering Harvard College, from which he graduated with high rank in 1855. He studied law in the office of George Biddle, and attended the lectures at the Law School of the University of Pennsylvania. He was admitted to the bar on November 10, 1857, and served as assistant city solicitor from 1859 to 1862. He was elected a judge of the District Court of Philadelphia City and County in 1871, and on the adoption of the Constitution of 1874 he was transferred to the Court of Common Pleas No. 2, and was reëlected in 1881. He was elected an associate justice of the Supreme Court in 1888, and became chief justice in 1903. His term expired in January, 1910. He was appointed prothonotary of the Supreme Court on the expiration of his term in 1910 and died while holding that position, on July 4, 1915.

He was appointed chairman of a commission to report on unpublished laws of the Province and State of Pennsylvania in 1883, which has compiled and published, under authority of the Act of May 19, 1887, P. L. 129, sixteen volumes of the Statutes at Large. He was author of the following works: "History of the District Court," 1875; "Mitchell on Motions and Rules," 1879; "Fidelity to Court as well as to Client," 1900; "Address on John Marshall Day," 1901; "History of the Law Association of Philadelphia," 1902, and "Hints on Practice in Appeals," 1904.

An interesting and valuable address on his life and judicial work, delivered by Hon. L. Carson before the Law Association of Philadelphia on March 10, 1916, was published in the twelfth number of volume twenty-five of the District Reports, of the date of March 28, 1916.

Christopher Heydrick, of Franklin, Pennsylvania, was appointed November 28, 1891, and served until the first Monday of January, 1893. He was born in French-Creek township, Venango county, on May 19, 1830, the son of Charles H. and Mary Ann Adams Heydrick. He was educated in the public schools and the Grand River Institute in Ohio, and graduated from Allegheny College in Meadville, Pennsylvania, in 1852. On his graduation he went to Kentucky, where he began the study of law and was admitted to practice at the expiration of two years. In a short time, however, he returned to Venango county, where he was admitted to the bar in Franklin in 1854, and continued to reside and practice his profession there until his death.

In 1859 petroleum was discovered in large quantities in Venango county, and he became connected with litigation of great importance relating thereto. Largely on this account, on November 28, 1891, he was appointed to fill a vacancy in the Supreme Court, occasioned by the death of Justice Silas M. Clark, and served until the first Monday of January, 1893, when he retired, having failed of an election to succeed himself. Thereupon he returned to the practice of his profession, in which he continued until about a year before his death, which took place on October 9, 1914, when he was eighty-four years of age.

John Dean was born at Williamsburg, Pennsylvania, on February 15, 1835. He spent a year at Washington College. After leaving college he taught school and at the same time studied law at Hollidaysburg, where he was admitted to the bar on March 21, 1855, and began to practice. He was appointed district attorney in 1867, and elected to the same office in 1868. He was elected president judge of the Twenty-fourth Judicial District in 1871, and reëlected in 1881 and 1891. While serving his last term in this office, he was elected to the Supreme Bench in 1892, dying during his term of office in 1905.

David Newlin Fell was born on November 4, 1840, in Buckingham, Bucks county. He attended the State Normal School with the class of 1862, and in August of the same year was commissioned a lieutenant of Company E, 122nd Regiment Pennsylvania Volunteers and took part with his regiment in many important battles. He studied law with his brother, William W. Fell, in Philadelphia, and was admitted to the bar on March 16, 1866. On May 3, 1877, he was appointed a judge of Court of Common Pleas No. 2, and at the following election was elected to that office, and was reëlected in 1887. He was elected an associate justice of the Supreme Court in 1893, and became chief justice on the retirement of James T. Mitchell from that office in 1910. His term expired in 1914.

Jacob Hay Brown was born at York, on September 11, 1849, and graduated from the Pennsylvania College at that place in 1868. He removed to Lancaster, where he was admitted to practice and for many years was associated with William Hugh Hensel. He was elected a judge of the Supreme Court in 1899, succeeding Judge Williams, and became chief justice in 1914, on the retirement of Judge Fell, and serving until the completion of his term.

Stephen Leslie Mestrezat was born in Greene county, on February 19, 1848. He graduated from the Law Department of Washington and Lee University in 1871, and was admitted to the Greene county bar shortly afterwards. He removed to Uniontown, where he became a law partner of Charles E. Boyle. He was elected an additional law judge of the Fourteenth Judicial District in 1893, and served in that capacity from January, 1899 on his election as a judge of the Supreme Court of the State. He died while in office, on April 28, 1918, and was succeeded by E. J. Fox, of Easton, until the first Monday of January, 1919.

Edward J. Fox was born at Easton, Pennsylvania, on April 3, 1858. He was educated at the Easton High School and Lafayette College, graduating from the latter in 1878, with the degree of A. M. He read law with his father, E. J. Fox, Sr., and was admitted to practice on December 17, 1880, when he formed a partnership with his father under the partnership name of E. J. Fox & Son. In 1896 he formed a partnership with his brother under the firm name of E. J. & J. W. Fox. He was appointed to the Supreme Bench to succeed Judge Mestrezat, deceased, on May 20, 1918, retiring on the first Monday of January, 1919, not having been elected to succeed himself.

William Plumer Potter was born on April 27, 1857, in Iowa. He was educated by private instructors and at Lafayette College. He was admitted to the bar in Iowa in 1880, and to the Allegheny county bar on May 6, 1882. He was appointed to the Supreme Bench of the State on September 25, 1900, succeeding Henry Green, and was elected to succeed himself in 1901. He died April 14, 1918.

Samuel Gustine Thompson was born at Franklin, Venango county, in 1837, a son of James Thompson, who preceded him on the Supreme Bench. He removed to Erie with his father in 1843, where he afterward attended the Erie Academy. After the removal of his father to Philadelphia on his election to the Supreme Bench, he took a partial course at the University of Pennsylvania, and was admitted to the bar in 1861. After thirty years of active practice at the Philadelphia bar, he was appointed to the Supreme Bench on the resignation of Chief Justice Paxson in 1893. He was a candidate on the Democratic ticket to succeed himself in the fall of that year, but failed of election. He was again appointed to the same court on November 25, 1903, on the death of Judge McCollum, and served until the first Monday of January, 1905. He died on September 10th, 1909.

John P. Elkin was born in Indiana county, in 1860. He graduated from the State Normal School of Indiana in the class of 1880, and later from the Law Department of the University of Michigan. He was admitted to the bar in September, 1885, and immediately commenced practice at Indiana. In 1884 and again in 1886 he was elected a member of the House of Representatives. He was appointed deputy attorney general of the Commonwealth in 1895, and attorney general in 1899, serving in that office for a term of four years. He was a prominent candidate for the Republican nomination for governor in 1902. He was elected to the

Supreme Bench in November, 1903, and served until his death in November, 1915.

John Stewart was born in 1839, and graduated at Princeton College. He studied law with Judge Watts, of Carlisle, after which he removed to Chambersburg. He was a member of the Constitutional Convention of 1873. He served as a member of the State Senate from 1881 to 1884. He was an independent candidate for governor in 1883. On the retirement of Judge Rowe as president judge of the Thirty-ninth Judicial District, he was elected to succeed him and took his seat in January, 1889, and was reëlected in 1899. He resigned in 1905, on his election as a judge of the Supreme Court, in which capacity he served until his death, November 25, 1920.

Robert Von Moschzisker was born at Philadelphia, on March 6, 1870. He was educated in the public schools and by private tutors. He studied law with Edward Shippen, was admitted to practice in 1896, and associated himself with his preceptor. He served as assistant district attorney in 1902-3. He was elected a judge of Court of Common Pleas No. 3, in November, 1903, and served in that capacity until January, 1910, when he became a judge of the Supreme Court, having been elected in the November preceding, succeeding James T. Mitchell. He became chief justice on the retirement of Justice Brown in 1921.

On the death of Judge Elkin, on October 3, 1915, he was succeeded by Robert S. Frazer, of Court of Common Pleas No. 2 of the Fifth Judicial District. A biographical sketch of Judge Frazer will be found in the chapter treating of that district.

Emory A. Walling was born on June 11, 1854, and reared on a farm in Erie county. He was educated in the public schools, the State Normal School at Edinboro, and the Lake Shore Seminary at North East. He was admitted to the bar about 1878. He served one term as district attorney, and one as State Senator. He built up a very large practice and became one of the leaders of the bar in the northwestern portion of the State. He was elected president judge of the Sixth Judicial District in November, 1896, and was reëlected in 1906, in which office he served until December 23, 1915, when he was appointed a justice of the Supreme Court to succeed John P. Elkin, deceased.

John W. Kephart was elected a Justice of the Supreme Court in 1918, and took his seat January 1, 1919, succeeding Edward J. Fox, retired. A biographical sketch of Justice Kephart will be found in Chapter LXXI, Superior Court.

Alexander Simpson, Jr., was born January 7, 1855, the son of John Alexander Simpson and Mary Atmore Simpson. He graduated from the Central High School of Philadelphia in 1871, from which school he received the degree of A. M. in 1876. He was admitted to the Philadelphia bar in 1879, and soon became prominent thereat. For many years he was associated with Hon. Francis Shunk Brown, former attorney general of the Commonwealth, as senior partner of the firm of Messrs. Simpson & Brown. He was appointed to the Supreme Bench on May

20, 1918, to succeed Hon. William P. Potter, and was elected to succeed himself in the fall of 1919. Judge Simpson was one of the organizers of the Pennsylvania Bar Association, and has always been prominent in its activities. He is a trustee of Dickinson College, and a member of the American Bar Association. He holds the degrees of M. A. from the Wesleyan University of Connecticut, and LL.D. from Dickinson College. He married, on March 3, 1909, Ella F. Trau, of Philadelphia.

Sylvester Baker Sadler was born September 29, 1876, the son of Hon. Wilbur Fisk Sadler, president judge of the Ninth Judicial District for twenty-one years, and Sarah Ellen Sterrett Sadler. His brother, Wilbur Fisk Sadler, Jr., late adjutant-general of New Jersey, died in 1916. Surviving brothers are Lewis Sterrett Sadler, highway commissioner of Pennsylvania, and Horace Trickett Sadler. Judge Sadler was educated in the common schools of Carlisle, Dickinson College, Yale University (graduated with honors in 1896, at the age of nineteen); Dickinson School of Law, 1898; admitted to the bar in 1898 at the age of twenty-one. He was an instructor in Dickinson School of Law, 1899 to 1906; is the author of "Criminal Procedure in Pennsylvania"; editor, Pennsylvania Supreme Court Cases (being those marked not to be reported, 1885 to 1889); practiced law until January 1, 1916; succeeded Wilbur Fisk Sadler as president judge, Ninth Judicial District, January 1, 1916, and served until January 1, 1921; became judge of the Supreme Court by election January 1, 1921, succeeding Hon. J. Hay Brown. He holds the degrees of A. B., A. M., LL.B., LL.D., and is a member of Phi Beta Kappa society.

William Irwin Schaffer was born in Germantown, Philadelphia, February 11, 1867, son of George A. Schaffer and Henrietta Irwin, daughter of William H. Irwin, adjutant-general of Pennsylvania, 1848-52. He was educated in the public schools of Chester, Pennsylvania. On leaving school, he became office boy in the office of Hon. O. B. Dickinson, now United States District Judge for the Eastern District of Pennsylvania, then clerked in a store in the city of Chester, and subsequently read law with Hon. William B. Broomall, one of the judges of the Court of Common Pleas for Chester county, and was admitted to the bar on arriving at age, on February 11, 1888. From his admission to the bar to his appointment to the Supreme Bench, Mr. Schaffer continuously practiced his profession in the city of Chester. He was elected district attorney of Delaware county, and served for two terms, from January 1, 1894 to January 1, 1900. In March, 1900, he was appointed State Reporter of Pennsylvania, and served in that office until his appointment as attorney general of the Commonwealth by Governor Sproul on January 21, 1919, in which office he served until his appointment in January, 1921, to fill the vacancy upon the Supreme Bench occasioned by the death of Justice Stewart. He holds the degree of Doctor of Laws from Lafayette College, and was elected president of the Pennsylvania Bar Association in June, 1918. He is married to Susan Ashley Cross, daughter of Major Charles F. Cross, of Towanda, Pennsylvania.

CHAPTER XLVIII.

CRIMINAL COURT FOR DAUPHIN, LEBANON AND SCHUYLKILL COUNTIES.

CHAPTER XLVIII.

Criminal Court for Dauphin, Lebanon and Schuylkill Counties.

A curious tribunal was established by the Act of April 18, 1867, P. L. 91, entitled "An act to establish criminal courts for Dauphin, Lebanon and Schuylkill counties." This act provided for the establishment of a court having the jurisdiction of a court of oyer and terminer and of a court of quarter sessions. In Schuylkill county its jurisdiction was to supersede the jurisdiction of the then existing courts of oyer and terminer and quarter sessions, the new court to have exclusive jurisdiction of crimes within that county. In Lebanon and Dauphin counties, then constituting one judicial district, the courts of oyer and terminer and quarter sessions were to continue as theretofore, and all indictments were to be found therein, but the district attorneys for Lebanon and Dauphin counties might at their option try such indictments in the new court; unless they elected to do so no terms of such court were to be held in those counties. In the case of Commonwealth v. Green, 58 Pa., 234 (1868), which sustained the constitutionality of this court, Chief Justice Thompson, in his dissenting opinion, characterized the act establishing the court, in part, as follows:

The act, I think I may safely say, is the most extraordinary legislative performance on our or any other statute book. It occupies three and a third octavo closely-printed pages of the Pamphlet Laws; is in a single section, forming but one sentence, and is without a full stop from beginning to end. This form, unlike all other precedents of statutes containing different provisions, is significant of conscious wrong intended in framing the bill, and that its shape was designed to prevent defeat in detail by separate votes on separate sections or paragraphs. I do not mean to say that *ipso facto* this circumstance necessarily impairs the validity of the act, but it does call for a severe scrutiny of its provisions.

Its provisions are no less remarkable. It ostensibly establishes three criminal courts, one in each of the three counties named, while in fact it establishes but one, and that one in the county of Schuylkill. It also provides for the appointment by the governor of a judge until the ensuing election, just as if it were a case of vacancy "happening by death or resignation," and for the election of the judge thereafter, as in other districts, by the electors of the three counties composing the pretended district.

The jurisdiction of the court for Schuylkill county is without limit both in oyer and terminer and in the quarter sessions, and is to be held and presided over by a single judge. To effectuate this completely, all criminal jurisdiction is forbidden to the constitutional courts of the county, as well as the summoning of grand juries in Dauphin and Lebanon counties. The jurisdiction of the court is made dependent solely on the option of the district attorney in each whether any court shall ever be holden

therein or not. No independent clerks for these courts are provided, but the office is conferred by the legislature on those elected for the performance of similar duties in the other criminal courts of the district. This is a disregard of the express provisions of sect. 3, art. VI of the constitution, which requires them to be elected. This disregard is not a novelty in the act; there is scarcely a provision in it that does not violate some provision or other of the constitution, as will be shown herein.

The constitutionality of this act was early raised. In the case of Commonwealth *v.* Ryan, decided at Harrisburg in 1867, to which reference is made in Commonwealth v. Hipple, 69 Pa., 9 (1871), but of which the writer can find no report, it was held that so much of the Act of 1867 as deprived the courts of oyer and terminer and of quarter sessions of Schuylkill county of their jurisdictions was unconstitutional. This left the new court with merely a concurrent jurisdiction of criminal cases in Schuylkill county.

As already stated, the court was held to be otherwise constitutionally established in Commonwealth v. Green, *supra,* and in Commonwealth v. Hipple, above referred to, it was held that it was the duty of the district attorney for Schuylkill county to prosecute criminal cases in the new court. The reasons for the establishment of this court appear from the message of Governor Geary accompanying his veto of Senate Bill No. 496 of the Session of 1868, entitled "An act to repeal an act, entitled 'An act to establish criminal courts for Dauphin, Lebanon and Schuylkill counties, approved April 18, 1867.'" It is interesting to note from this message that the lawlessness which eventually culminated in the Molly Maguire outrages existed in Schuylkill county as early as 1867:

It is a matter of common notoriety that more difficulty is experienced in preserving the peace and enforcing the laws in the mining regions of our State than elsewhere. The county of Schuylkill for several years past has had an unenviable reputation in this respect, and it is stated, on reliable authority, that in this county alone fifty-four murders and homicides were committed in the four years preceding the first of January, 1867. Many of the offenders were never arrested, and of all the murderers but one was ever convicted of murder in the first degree, and he was subsequently acquitted on a new trial granted six months after his first conviction. Life and property were alike insecure; the most flagrant outlaws went unwhipt of justice; not a few of the best citizens fled the country, impelled by the fear of outrage or assassination, and society seemed rapidly tending to that chaotic state which precedes and compels the formation of vigilance committees for self-preservation. Under this lamentable condition of things, the people, in large numbers, appealed to the executive and to the legislature at its last session and implored protection and relief. Impressed with the importance of the subject, and the necessity for immediate action, I submitted a special message, and after a full consideration of the whole matter, the legislature resolved to respond to the appeal by granting the protection asked. For this purpose two laws were enacted: the one, entitled "An act for the better protection of person, property and life in the mining regions of this Commonwealth,"

approved on the 12th of April, 1867; and the other, entitled "An act to establish criminal courts for Dauphin, Lebanon and Schuylkill counties," approved 18th April, 1867, and it is this latter law which the present bill proposes to repeal. These two bills were parts of the same general system of relief, and were at once put in force by the appointment of the authorized police and other officers. The results have proved the wisdom of these enactments; murders, robberies, assassinations and violence no longer characterize that county, but life and property are again secure as in other portions of the State. Why then repeal these laws, or either of them? Why again loosen the strong bands of the law, or again inaugurate the reign of insecurity, confusion and terror? The same elements of discord and violence are there, only waiting the opportunity; and the same reasons exist for the continuance of the laws, that last year demanded their enactment.

A careful re-examination of the whole subject has but confirmed me in the views expressed in my special and annual messages; and with the conviction that existing laws are necessary to the preservation of the public peace, and the security of life and property. I have heard, and can imagine no sufficient reason for the proposed repeal. The pretext that the one bill has never gone into full operation, and is alleged to be unconstitutional, does not impress me as anything but a pretext. True it is, those who connived at the former wrongs and violence, and who often aided in screening the perpetrators of them from merited punishment, are now attempting to have the law declared unconstitutional by the Supreme Court, and are loud in their boastings of anticipated success. But, in these times all are too familiar with the denunciation of laws as unconstitutional, which propose to protect the innocent or punish the guilty, to be frightened from their propriety or diverted from the path of duty, by any such clamor. If the Supreme Court should declare the law unconstitutional, then this proposed repeal would be unnecessary. If not, let it be enforced, like any other law, against all wrong-doers who come within its provisions. And if so much good has resulted heretofore, merely from the wholesome terror with which it has inspired evil-doers, what may we not expect should it be permitted to go into full operation?

Actuated by these views and considerations, my duty seems plain. The people of Schuylkill county demand, and have a right to protection. The old laws were demonstrated to be inadequate, and the new have proved efficient for the purpose. Unwilling that they, or any part of them, shall be repealed until something better is substituted, I take the responsibility of returning the bill, without my approval, for the further consideration of the legislature.

The Act of April 22, 1870, P. L. 1254, amended the Act of 1867 creating the new court, and provided, following the decision in Commonwealth v. Ryan, that the court should have concurrent jurisdiction with the courts of quarter sessions and of oyer and terminer within Schuylkill county, which latter courts in that county should hold sessions not oftener than once a year, and only when they should deem it necessary and proper, to continue for the term of one week and no longer. The authority to grant liquor licenses in that county was vested in the new court, and a refusal on the part of the clerk of quarter sessions and oyer and terminer to act as clerk of the new court was made a misdemeanor.

The object of including Dauphin and Lebanon counties within the jurisdiction of the new court evidently was to provide an electorate which should overcome any majority in Schuylkill county which might be in favor of the election of judges who would not enforce the criminal laws; also that jurors might be drawn from without that county. The writer cannot find that the district attorney of Dauphin county ever exercised his option of trying criminal cases in this court, and it is probable that the case was the same in Lebanon county. The purpose was to establish a criminal court for Schuylkill county, the judge of which should be elected by the voters of Dauphin, Lebanon and Schuylkill counties and the jurors drawn from all three counties.

This extraordinary tribunal was specifically abolished by the Constitution of 1873, and the Act of May 14, 1874, P. L. 139, when Judge Cyrus L. Pershing had been elected president judge of the courts of Schuylkill county, and there was no question of the enforcement of the criminal laws by that admirable judge. Colonel David B. Green was appointed, and afterwards elected judge of this court. He served during the Rebellion as lieutenant-colonel of the Twenty-seventh Regiment of Pennsylvania Volunteers, was a man of sterling integrity and an efficient judge. Upon the abolition of the court by the Constitution, he was commissioned as a judge of the Court of Common Pleas of Schuylkill county for his unexpired term, at the expiration of which he was defeated for a reëlection, but in 1881 he was elected an additional law judge, and in 1891 reëlected. He died on February 6, 1893.

CHAPTER XLIX.

THE JUDICIARY UNDER THE CONSTITUTION OF 1873.

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The Judiciary Under the Constitution of 1873.

In 1873, when the Constitutional Convention of that year assembled, the Supreme Court consisted of five judges and had pending before it some eight hundred appeals, which number was constantly increasing. Various methods of relief were proposed in the convention.

The chairman of the judiciary committee, William H. Armstrong, made a report recommending a circuit court of appeals consisting of eight judges to be elected throughout the State, in six circuits, these eight judges to be supplemented by one member of the Supreme Court to be assigned for that purpose by the chief justice. Various other plans were suggested, all of which were rejected, and the simple expedient of increasing the number of judges from five to seven was adopted. The term of the judges was increased from fifteen to twenty-one years, and they were made ineligible for re-election.

The Constitution of 1873 abolished the court of nisi prius, the district courts, the registers' courts, the court of criminal jurisdiction for the counties of Schuylkill, Lebanon and Dauphin, and all other courts not specified in it, and all acts creating such courts were repealed by the Act of May 14, 1874, P. L. 139. The said Constitution provided that whenever a county should contain forty thousand inhabitants, it should constitute a separate judicial district and elect one judge learned in the law, and further provided that whenever the population of a county should exceed one hundred and fifty thousand inhabitants, the General Assembly should establish a separate orphans' court therein to consist of one or more judges learned in the law. It abolished the office of alderman in Philadelphia, and provided in lieu thereof for a magistrate for each thirty thousand inhabitants. It also abolished the office of associate judge not learned in the law, except in judicial districts consisting of two or more counties. Its provisions relative to the courts were specifically as follows:

Article V.—The Judiciary.

Sec. 1. *Judicial Power.*—The judicial power of this Commonwealth shall be vested in a Supreme Court, in courts of common pleas, courts of oyer and terminer and general jail delivery, courts of quarter sessions of the peace, orphans' courts, magistrates' courts, and in such other courts as the General Assembly may from time to time establish.

Sec. 2. *Supreme Court.*—The Supreme Court shall consist of seven judges, who shall be elected by the qualified electors of the State at large. They shall hold their offices for the term of twenty-one years, if they so long behave themselves well, but shall not be again eligible. The judge whose commission shall first expire shall be chief justice, and thereafter

each judge whose commission shall first expire shall in turn be chief justice.

Sec. 3. *Jurisdiction of Supreme Court.*—The jurisdiction of the Supreme Court shall extend over the State, and the judges thereof shall, by virtue of their offices, be justices of oyer and terminer and general jail delivery in the several counties; they shall have original jurisdiction in cases of injunction where a corporation is a party defendant, of habeas corpus, of mandamus to courts of inferior jurisdiction, and of quo warranto as to all officers of the Commonwealth whose jurisdiction extends over the State, but shall not exercise any other original jurisdiction; they shall have appellate jurisdiction by appeal, certiorari or writ of error in all cases, as is now or may hereafter be provided by law.

Sec. 4. *Common Pleas Courts.*—Until otherwise directed by law, the courts of common pleas shall continue as at present established, except as herein changed; not more than four counties shall, at any time, be included in one judicial district organized for said courts.

Sec. 5. *Judicial Districts, Associate Judges.*—Whenever a county shall contain forty thousand inhabitants it shall constitute a separate judicial district, and shall elect one judge learned in the law; and the General Assembly shall provide for additional judges, as the business of the said districts may require. Counties containing a population less than is sufficient to constitute separate districts shall be formed into convenient single districts, or, if necessary, may be attached to contiguous districts as the General Assembly may provide. The office of associate judge, not learned in the law, is abolished in counties forming separate districts; but the several associate judges in office when this Constitution shall be adopted shall serve for their unexpired terms.

Sec. 6. *Courts of Common Pleas of Philadelphia and Allegheny Counties.*—In the county of Philadelphia all the jurisdiction and powers now vested in the district courts and courts of common pleas, subject to such changes as may be made by this Constitution or by law, shall be in Philadelphia vested in five distinct and separate courts of equal and coordinate jurisdiction, composed of three judges each. The said courts in Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three, number four, and number five, but the number of said courts may be by law increased, from time to time, and shall be in like manner designated by successive numbers. The number of judges in any of said courts, or in any county where the establishment of an additional court may be authorized by law, may be increased, from time to time, and whenever such increase shall amount in the whole to three, such three judges shall compose a distinct and separate court as aforesaid, which shall be numbered as aforesaid. In Philadelphia all suits shall be instituted in the said courts of common pleas without designating the number of the said court, and the several courts shall distribute and apportion the business among them in such manner as shall be provided by rules of court, and each court, to which any suit shall be thus assigned, shall have exclusive jurisdiction thereof, subject to change of venue, as shall be provided by law.

In the county of Allegheny all the jurisdiction and powers now vested in the several numbered courts of common pleas shall be vested in one court of common pleas, composed of all the judges in commission in said

courts. Such jurisdiction and powers shall extend to all proceedings at law and in equity which shall have been instituted in the several numbered courts, and shall be subject to such changes as may be made by law, and subject to change of venue as provided by law.

The president judge of said court shall be selected as provided by law. The number of judges in said court may be by law increased from time to time. This amendment shall take effect on the first day of January succeeding its adoption. (Amendment of November 7, 1911).

The above amendment to Section 6 of Article V of the Constitution provides for the creation of one court of common pleas in Allegheny county in place of the several numbered courts of common pleas which had existed therein under the provisions of said section before amendment. The result of the consolidation of the courts of common pleas of the Fifth Judicial District under the above amendment have been most happy, and it is to be regretted that a similar amendment cannot be adopted applicable to Philadelphia County.

The Act of June 11, 1913, P. L. 469, entitled "An act to consolidate the five courts of common pleas of Philadelphia county" sought to effect a similar consolidation of the courts of Philadelphia county, but this act was held unconstitutional in Bachman v. McMichael, 242 Pa., 482 (1913). Such a change required an amendment to the Constitution, as had been had in the case of the courts of Allegheny county, instead of an Act of Assembly.

At the session of 1915, a joint resolution was passed proposing an amendment to the said Sixth Section of Article V of the Constitution effecting a similar consolidation of the courts of common pleas of Philadelphia to that effected in the courts of Allegheny county by the amendment of 1911. This resolution, however, was not passed by a succeeding legislature so as to permit the amendment to be submitted to a vote of the people, and Philadelphia County, therefore, continues to have five separate courts with five separate sets of rules.

The Act of March 29, 1913, P. L. 20, provided for the addition of one judge to each of the five courts of common pleas in Philadelphia county, and under its provisions such judges were appointed, but in the case of Commonwealth v. Hyneman, 242 Pa., 244 (1913), it was held that the said act was unconstitutional, and that while the number of judges in Philadelphia county might be increased by the legislature from time to time, whenever such increase amounted in the whole to three, such three judges should constitute a distinct and separate court.

Sec. 7. *Prothonotary of Philadelphia, Salaries, Fees, Dockets.*—For Philadelphia there shall be one prothonotary's office, and one prothonotary for all said courts, to be appointed by the judges of said courts, and to hold office for three years, subject to removal by a majority of the said judges; the said prothonotary shall appoint such assistants as may be necessary and authorized by said courts; and he and his assistants shall receive fixed salaries, to be determined by law and paid by said county; all fees collected in said office, except such as may be by law due to the

Commonwealth, shall be paid by the prothonotary into the county treasury. Each court shall have its separate dockets, except the judgment docket, which shall contain the judgment and liens of all the said courts as is or may be directed by law.

Sec. 8. *Criminal Courts in Philadelphia and Allegheny Counties.*—The said courts in the counties of Philadelphia and Allegheny, respectively, shall, from time to time, in turn detail one or more of their judges to hold the courts of oyer and terminer and the courts of quarter sessions of the peace of said counties, in such manner as may be directed by law.

Sec. 9. *Powers of Judges of Common Pleas Courts.*—Judges of the courts of common pleas learned in the law shall be judges of the courts of oyer and terminer, quarter sessions of the peace and general jail delivery, and of the orphans' court, and within their respective districts shall be justices of the peace as to criminal matters.

Sec. 10. *Certiorari to Courts Not of Record.*—The judges of the courts of common pleas, within their respective counties, shall have power to issue writs of certiorari to justices of the peace and other inferior courts not of record, and to cause their proceedings to be brought before them, and right and justice to be done.

Sec. 11. *Justices of the Peace, Aldermen, Term, Residence, Number.*—Except as otherwise provided in this Constitution, justices of the peace or aldermen shall be elected in the several wards, districts, boroughs or townships, by the qualified electors thereof, at the municipal election, in such manner as shall be directed by law, and shall be commissioned by the Governor for a term of six years. No township, ward, district or borough shall elect more than two justices of the peace or aldermen without the consent of a majority of the qualified electors within such township, ward or borough; no person shall be elected to such office unless he shall have resided within the township, borough, ward or district for one year next preceding his election. In cities containing over fifty thousand inhabitants, not more than one alderman shall be elected in each ward or district. (Amendment of November 2, 1909).

Sec. 12. *Magistrates' Courts in Philadelphia, Election, Term, Salaries, Jurisdiction.*—In Philadelphia there shall be established, for each thirty thousand inhabitants, one court, not of record, of police and civil causes, with jurisdiction not exceeding one hundred dollars; such courts shall be held by magistrates whose term of office shall be six years, and they shall be elected on general ticket at the municipal election, by the qualified voters at large; and in the election of the said magistrates no voter shall vote for more than two-thirds of the number of persons to be elected when more than one are to be chosen; they shall be compensated only by fixed salaries, to be paid by said county; and shall exercise such jurisdiction, civil and criminal, except as herein provided, as is now exercised by aldermen, subject to such changes not involving an increase of civil jurisdiction or conferring political duties, as may be made by law. In Philadelphia the office of alderman is abolished. (Amendment of November 2, 1909).

The Act of February 5, 1875, P. L. 56, provided for the establishment of twenty-four magistrates' courts in Philadelphia, and that of February 1, 1887, P. L. 3 for the establishment of four more, since which

date the number of such courts has remained at twenty-eight, which, it is necessary to say, is by no means one for each thirty thousand inhabitants of that city.

Sec. 13. *Disposition of Fees, Fines, Etc.*—All fees, fines and penalties in said courts shall be paid into the county treasury.

Sec. 14. *Appeal from Summary Conviction.*—In all cases of summary conviction in this Commonwealth, or of judgment in suit for a penalty before a magistrate, or court not of record, either party may appeal to such court of record as may be prescribed by law, upon allowance of the appellate court or judge thereof upon cause shown.

Sec. 15. *Election of Judges, Term, Removal.*—All judges required to be learned in the law, except the judges of the Supreme Court, shall be elected by the qualified electors of the respective districts over which they are to preside, and shall hold their offices for the period of ten years, if they shall so long behave themselves well; but for any reasonable cause, which shall not be sufficient ground for impeachment, the Governor may remove any of them on the address of two-thirds of each House of the General Assembly.

Sec. 16. *Voting for Supreme Court Judges.*—Whenever two judges of the Supreme Court are to be chosen for the same term of service, each voter shall vote for one only, and when three are to be chosen he shall vote for no more than two; candidates highest in vote shall be declared elected.

Sec. 17. *Priority of Commission.*—Should any two or more judges of the Supreme Court, or any two or more judges of the court of common pleas for the same district, be elected at the same time, they shall, as soon after the election as convenient, cast lots for priority of commission, and certify the result to the Governor, who shall issue their commissions in accordance therewith.

Sec. 18. *Compensation of Judges.*—The judges of the Supreme Court and the judges of the several courts of common pleas, and all other judges required to be learned in the law, shall at stated times receive for their services an adequate compensation, which shall be fixed by law, and paid by the State. They shall receive no other compensation, fees or perquisites of office for their services from any source, nor hold any other office of profit under the United States, this State or any other State.

Sec. 19. *Residence of Judges.*—The judges of the Supreme Court, during their continuance in office, shall reside within this Commonwealth; and the other judges, during their continuance in office, shall reside within the districts for which they shall be respectively elected.

Sec. 20. *Chancery Powers.*—The several courts of common pleas, besides the powers herein conferred, shall have and exercise within their respective districts, subject to such changes as may be made by law, such chancery powers as are now vested by law in the several courts of common pleas of this Commonwealth, or as may hereafter be conferred upon them by law.

Sec. 21. *Duties of Judges, Nisi Prius Courts, Supreme Court Judges.*—No duties shall be imposed by law upon the Supreme Court or any of

the judges thereof, except such as are judicial, nor shall any of the judges thereof exercise any power of appointment except as herein provided. The court of nisi prius is hereby abolished, and no court of original jurisdiction to be presided over by any one or more of the judges of the Supreme Court shall be established.

Sec. 22. *Orphans' Courts, Registers' Court Abolished.*—In every county wherein the population shall exceed one hundred and fifty thousand, the General Assembly shall, and in any other county may, establish a separate orphans' court, to consist of one or more judges who shall be learned in the law, which court shall exercise all the jurisdiction and powers now vested in or which may hereafter be conferred upon the orphans' courts, and thereupon the jurisdiction of the judges of the court of common pleas within such county, in orphans' court proceedings, shall cease and determine. In any county in which a separate orphans' court shall be established, the register of wills shall be clerk of such court and subject to its directions, in all matters pertaining to his office; he may appoint assistant clerks, but only with the consent and approval of said court. All accounts filed with him as register or as clerk of the said separate orphans' court shall be audited by the court without expense to parties, except where all parties in interest in a pending proceeding shall nominate an auditor whom the court may, in its discretion, appoint. In every county orphans' courts shall possess all the powers and jurisdiction of a register's court, and separate registers' courts are hereby abolished.

Sec. 23. *Style of Process, Indictments.*—The style of all process shall be "The Commonwealth of Pennsylvania." All prosecutions shall be carried on in the name and by the authority of the Commonwealth of Pennsylvania, and conclude "against the peace and dignity of the same."

Sec. 24. *Appeal to Supreme Court in Criminal Cases.*—In all cases of felonious homicide, and in such other criminal cases as may be provided for by law, the accused after conviction and sentence may remove the indictment, record and all proceedings to the Supreme Court for review.

Sec. 25. *Vacancies in Courts of Record.*—Any vacancy happening by death, resignation or otherwise, in any court of record, shall be filled by appointment by the Governor, to continue till the first Monday of January next succeeding the first general election which shall occur three or more months after the happening of such vacancy.

Sec. 26. *Uniform Laws for Court.—Certain Courts Prohibited.*—All laws relating to courts shall be general and of uniform operation, and the organization, jurisdiction and powers of all courts of the same class or grade, so far as regulated by law, and the force and effect of the process and judgments of such courts, shall be uniform; and the General Assembly is hereby prohibited from creating other courts to exercise the powers vested by this Constitution in the judges of the courts of common pleas and orphans' courts.

Sec. 27. *Litigants May Dispense with Jury Trial.*—The parties, by agreement filed, may in any civil case dispense with trial by jury, and submit the decision of such case to the court having jurisdiction thereof, and such court shall hear and determine the same; and the judgment thereon shall be subject to writ of error as in other cases.

ARTICLE VIII.—SUFFRAGE AND ELECTIONS.

Section 3. *Municipal Elections, Election of Judges and County Officers.*—All judges elected by the electors of the State at large may be elected at either a general or municipal election, as circumstances may require. All elections for judges of the courts for the several judicial districts, and for county, city, ward, borough, and township officers, for regular terms of service, shall be held on the municipal election day; namely, the Tuesday next following the first Monday of November in each odd-numbered year, but the General Assembly may by law fix a different day, two-thirds of all the members of each House consenting thereto: Provided, That such elections shall be held in an odd-numbered year: Provided further, That all judges for the courts of the several judicial districts holding office at the present time, whose terms of office may end in an odd-numbered year, shall continue to hold their offices until the first Monday of January in the next succeeding even-numbered year. (Amendment of November 4, 1913).

SCHEDULE ANNEXED TO THE CONSTITUTION OF 1873.

Sec. 10. *Judges of Supreme Court.*—The judges of the Supreme Court in office when this Constitution shall take effect shall continue until their commissions severally expire. Two judges in addition to the number now composing the said court shall be elected at the first general election after the adoption of this Constitution.

Sec. 11. *Courts of Record.*—All courts of record and all existing courts which are not specified in this Constitution shall continue in existence until the first day of December, in the year one thousand eight hundred and seventy-five, without abridgment of their present jurisdiction, but no longer. The court of first criminal jurisdiction for the counties of Schuylkill, Lebanon and Dauphin is hereby abolished, and all causes and proceedings pending therein in the county of Schuylkill shall be tried and disposed of in the courts of oyer and terminer and quarter sessions of the peace of said county.

Sec. 12. *Registers' Courts Abolished.*—The registers' courts now in existence shall be abolished on the first day of January next succeeding the adoption of this Constitution.

Sec. 13. *Judicial Districts.*—The General Assembly shall, at the next session after the adoption of this Constitution, designate the several judicial districts as required by this Constitution. The judges in commission when such designation shall be made shall continue during their unexpired terms judges of the new districts in which they reside; but, when there shall be two judges residing in the same district, the president judge shall elect to which district he shall be assigned and the additional law judge shall be assigned to the other district.

Sec. 14. *Decennial Adjustment of Judicial Districts.*—The General Assembly shall, at the next succeeding session after each decennial census and not oftener, designate the several judicial districts as required by this Constitution.

Sec. 15. *Judges in Commission.*—Judges learned in the law of any court of record holding commissions in force at the adoption of this Constitution shall hold their respective offices until the expiration of the terms for which they were commissioned, and until their successors shall

be duly qualified. The Governor shall commission the president judge of the court of first criminal jurisdiction for the counties of Schuylkill, Lebanon and Dauphin as a judge of the court of common pleas of Schuylkill county, for the unexpired term of his office.

Sec. 16. *President Judges, Casting Lots, Associate Judges.*—After the expiration of the term of any president judge of any court of common pleas, in commission at the adoption of this Constitution, the judge of such court learned in the law and oldest in commission shall be the president judge thereof; and when two or more judges are elected at the same time in any judicial district they shall decide by lot which shall be president judge; but when a president judge of a court shall be re-elected he shall continue to be president judge of that court. Associate judges not learned in the law, elected after the adoption of this Constitution, shall be commissioned to hold their offices for the term of five years from the first day of January next after their election.

Sec. 17. *Compensation of Judges.*—The General Assembly, at the first session after the adoption of this Constitution, shall fix and determine the compensation of the judges of the Supreme Court and of the judges of the several judicial districts of the Commonwealth; and the provisions of the fifteenth section of the article on legislation shall not be deemed inconsistent herewith. Nothing contained in this Constitution shall be held to reduce the compensation now paid to any law judge of this Commonwealth now in commission.

Sec. 18. *Courts of Philadelphia and Allegheny Counties, Organization in Philadelphia.*—The courts of common pleas in the counties of Philadelphia and Allegheny shall be composed of the present judges of the district court and court of common pleas of said counties until their offices shall severally end, and of such other judges as may from time to time be selected. For the purpose of first organization in Philadelphia the judges of the court number one shall be Judges Allison, Pierce and Paxson; of the court number two, Judges Hare, Mitchell, and one other judge to be elected; of the court number three, Judges Ludlow, Finletter and Lynd; and of the court number four, Judges Thayer, Briggs, and one other judge to be elected. The judge first named shall be the president judge of said courts respectively, and thereafter the president judge shall be the judge oldest in commission; but any president judge re-elected in the same court or district, shall continue to be president judge thereof. The additional judges for courts numbers two and four shall be voted for and elected at the first general election after the adoption of this Constitution, in the same manner as the two additional judges of the Supreme Court, and they shall decide by lot which court they shall belong. Their term of office shall commence on the first Monday of January, in the year one thousand eight hundred and seventy-five.

Sec. 19. *Organization of Courts in Allegheny County.*—In the county of Allegheny, for the purpose of first organization under this Constitution, the judges of the court of common pleas, at the time of the adoption of this Constitution, shall be the judges of the court number one, and the judges of the district court, at the same date, shall be the judges of the common pleas number two. The president judges of the common pleas and district court shall be president judge of said courts number one and two respectively, until their offices shall end; and thereafter the

judge oldest in commission shall be president judge; but any president judge reëlected in the same court or district, shall continue to be president judge thereof.

Sec. 20. *When Reorganization of Courts to Take Effect.*—The organization of the courts of common pleas under this Constitution for the counties of Philadelphia and Allegheny shall take effect on the first Monday of January, one thousand eight hundred and seventy-five, and existing courts in said counties shall continue with their present powers and jurisdiction until that date, but no new suits shall be instituted in the courts of nisi prius after the adoption of this Constitution.

Sec. 21. *Causes Pending in Philadelphia, Transfer of Records.*—The causes and proceedings pending in the court of nisi prius, court of common pleas, and district court in Philadelphia, shall be tried and disposed of in the court of common pleas. The records and dockets of said courts shall be transferred to the prothonotary's office of said county.

Sec. 22. *Causes Pending in Allegheny County.*—The causes and proceedings pending in the court of common pleas in the county of Allegheny shall be tried and disposed of in the court number one; and the causes and proceedings pending in the district court shall be tried and disposed of in the court number two.

Sec. 23. *Prothonotary of Philadelphia County.*—The prothonotary of the court of common pleas of Philadelphia shall be first appointed by the judges of said court on the first Monday of December in the year one thousand eight hundred and seventy-five, and the present prothonotary of the district court in said county shall be the prothonotary of the said court of common pleas until said date when his commission shall expire, and the present clerk of the court of oyer and terminer and quarter sessions of the peace in Philadelphia shall be the clerk of such court until the expiration of his present commission on the first Monday of December, in the year one thousand eight hundred and seventy-five.

Sec. 24. *Aldermen.*—In cities containing over fifty thousand inhabitants, except Philadelphia, all aldermen in office at the time of the adoption of this Constitution shall continue in office until the expiration of their commissions, and at the election for city and ward officers in the year one thousand eight hundred and seventy-five one alderman shall be elected in each ward as provided in this Constitution.

Sec. 25. *Magistrates in Philadelphia.*—In Philadelphia magistrates in lieu of aldermen shall be chosen as required in this Constitution, at the election in said city for city and ward officers in the year one thousand eight hundred and seventy-five; their term of office shall commence on the first Monday of April succeeding their election. The terms of office of aldermen in said city holding or entitled to commissions at the time of the adoption of this Constitution shall not be affected thereby.

By the Act of May 5, 1876, P. L. 115, the Supreme Court is authorized to change and transfer from one district to another any county or counties in their discretion, and for the purpose of expediting the disposal of the business of any county so transferred, to change the return days of the terms of the several districts in the Commonwealth, increase or diminish the number of weeks of the respective terms in any district, and to make all necessary rules and orders necessary to carry the provisions

of the act into effect. Under the provisions of this act the counties have been divided between the First, Second and Third Supreme Judicial Districts, as they are apportioned at the present time.

Prior to 1906, judges of the Supreme and Superior Courts were nominated by State conventions of the several parties, and the judges of the district courts by conventions held for the county or counties composing the several districts. The uniform Primaries Act of February 17, 1906, P. L. 36, provided for the nomination of the district judges by the primaries therein provided for, and the judges of the appellate courts by State conventions, the delegates to which should be elected at such primaries.

By the Act of July 24, 1913, P. L. 1001, however, all judges of courts of record, whether of original or appellate jurisdiction, are nominated on a so-called Non-Partisan ticket, voted on at the primaries. The operation of this act has not been especially objectionable in the nomination of judges of the county courts, who are well known within their respective jurisdictions, but its effect on the nomination of judges of the appellate courts has been deplorable. Before the passage of said act, candidates for these offices were selected by the state conventions of the two leading parties, and it was extremely unusual for a candidate to be nominated who was not well fitted for the office. A judge who had satisfactorily served for one term was almost certain to be renominated by the party which had elected him, whereas under the present law he must run the gauntlet of a primary in order to secure a nomination, at which he will stand little better chance than a competitor who has had no judicial experience. The individual voter cannot be expected to make a judicious choice out of perhaps a dozen candidates of whose comparative merits he knows nothing. On the other hand, the delegates to a state convention were thoroughly advised as to the comparative merits of candidates, and a desire for party success usually dictated the selection of the best qualified.

Another objection to the Non-Partisan primary is the additional cost to which candidates are subjected. Under the old system, a candidate was subjected to but slight cost in connection with his nomination. After his nomination he contributed to the success of the ticket upon which he was nominated, such sum as he could afford. Under the present system he is subjected to a great initial cost before his nomination. In cases where judges are candidates to succeed themselves, this works a great hardship. The Act of 1913 was generally regarded as a great mistake, and it was repealed by the Act of May 10, 1921, No. 198.

CHAPTER L.

THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY.

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The Court of Common Pleas of Dauphin County.

As the court of the county wherein the seat of government is located, the Court of Common Pleas of Dauphin County has had conferred upon it from time to time special jurisdictions in addition to those exercised by courts of common pleas generally.

By Section 11 of the Act of March 30, 1811, 5 Smith's Laws, 228, jurisdiction was given to the Court of Common Pleas of the county in which the seat of government might be of appeals from settlements of taxes and other public accounts made by the Auditor General and State Treasurer. Appeals lie from the judgments of said court in such cases to the Supreme Court.

By the Act of April 7, 1870, the Court of Common Pleas of the County of Dauphin was given jurisdiction throughout the State for the purpose of hearing and determining all suits, claims and demands whatever at law and in equity in which the Commonwealth is the party plaintiff, for accounts, unpaid balances and liens, taxes, penalties, and all other causes of action, real, personal and mixed, and for the purpose of collecting any such demands a writ of foreign attachment may issue against the property of any non-resident defendant. Defaulting public officers may be prosecuted in said court under the provisions of Sections 12 to 15, inclusive, of the Act of April 16, 1845, P. L. 532.

By Section 1 of the Act of June 19, 1913, P. L. 526, which amended Section 1 of the Act of March 19, 1903, P. L. 32, amending the Act of June 8, 1893, P. L. 345, the Court of Common Pleas of the county in which the seat of government is located is given power to issue the writ of mandamus to the Lieutenant-Governor, Secretary of the Commonwealth, Attorney General, Secretary of Internal Affairs, Superintendent of Public Instruction, State Treasurer, Auditor General, Insurance Commissioner and Commissioners of the Sinking Fund, the Medical Council of Pennsylvania and the several Boards of Medical Examiners, the Board of Undertakers, the Board of Dental Examiners, the Board for the Examination of Accounts for the State of Pennsylvania, the State Board of Examiners for the Registration of Nurses, the Dental Conucil of Pennsylvania, the State Board of Osteopathic Examiners, the Water Supply Commission of Pennsylvania, the State Board of Censors for Moving-Picture Films, the Board to License Private Bankers, the Armory Board of the State of Pennsylvania, and the State Fire Marshal.

Cases involving nominations to office are determined by said court in suits of mandamus brought against the Secretary of the Commonwealth under the provisions of this act, or by injunction proceedings.

By Section 17 of Article VI of the Act of July 26, 1913, P. L. 1374, which act established the Public Service Commission, an appeal was given to the Court of Common Pleas of Dauphin County from any finding or determination by said commission, and the court was given exclusive jurisdiction throughout the Commonwealth for the purpose of hearing and determining all said appeals, but by Section 1 of the Act of June 3, 1915, P. L. 779, appeals from the orders of the Public Service Commission are now taken to the Superior Court instead of the Court of Common Pleas of Dauphin County.

Section II of the Bill of Rights of the Constitution of 1873 provides that suits may be brought against the Commonwealth in such manner in such courts and in such cases as the legislature may by law direct, and the Constitutions of 1790 and 1838 contained similar provisions. Under these provisions permission to bring suit against the Commonwealth in the Court of Common Pleas of Dauphin County has been sometimes given by special acts. Under this constitutional provision a court of claims might have been established or the jurisdiction of such a court generally conferred upon the Court of Common Pleas of Dauphin County, but this has never been attempted, although the United States and some States have established such tribunals, wherein suits may be brought in certain specified cases against the United States or the states establishing such courts.

By Section 21 of the Act of June 2, 1915, P. L. 762, the State Workmen's Insurance Fund may be sued in the Court of Common Pleas of Dauphin County to enforce any right given against or to any subscriber or other person under the said Act of June 2, 1915, or the Workmen's Compensation Act of 1915.

Since the decision in Collins v. Commonwealth, 262 Pennsylvania 572 (1919), holding that a special Act of Assembly creating a liability against the State where none existed before, and authorizing suit to recover for the liability thus created, is unconstitutional, the necessity for a court of claims to avoid great injustice has become evident.

CHAPTER LI.

JUDICIAL DISTRICTS.

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Judicial Districts.

Judicial Districts were first created by the Act of April 13, 1791, 3 Sm. L., 33, by which the counties then in existence were divided into five districts. Prior to 1791, each county had been a judicial unit, its courts consisting of a quorum of the justices of the peace appointed for the county. The object of the creation of judicial districts consisting of several counties each was to provide courts presided over by judges learned in the law, without providing such judges for each county.

After 1791, the counties in the several districts were shifted about by a number of acts, until by the Act of February 24, 1806, 4 Sm. L., 270, a new division of counties was made into ten judicial districts. Additional districts were created until the total number of such districts was eighteen, and by Section 24 of the Act of April 14, 1834, P. L. 333, the counties constituting each of these districts were readjusted. This was the last general act establishing judicial districts to be passed prior to 1874.

Thirteen additional districts were created between 1834 and 1874, and by the Act of April 9, 1874, P. L. 54, which was passed in compliance with Section 13 of the Schedule of the Constitution of 1874, requiring the General Assembly at the next session after the adoption of the constitution to designate the several judicial districts, forty-three judicial districts were established. Section 14 of said schedule required the General Assembly at the next succeeding session after each decennial census, and not oftener, to designate the several judicial districts, and in conformity with this provision the State was redistricted in 1883, in 1895, and again in 1901. Two new districts were formed in 1893 by the Acts of April 28, 1893, P. L. 27, and May 4, 1893, P. L. 31, and a readjustment of the Twenty-fifth and Fifty-fifth districts was attempted by the Act of May 14, 1915, P. L. 498, but this last named act was held contrary to the provisions of the above mentioned fourteenth section of the Schedule of 1874: Commonwealth v. Heck, 251 Pa., 39 (1915). It follows that the Acts of 1893 were unconstitutional, but the defect in the establishment of the districts provided for by those acts was cured by the general apportionment act of 1895. The constitutional mandate was not complied with after the census of 1910, but it was so complied with in 1921, and the districts are now as fixed by the Act of that year.

The Act of 1791 contemplated but one judge learned in the law for each judicial district, but, as the increase of business made the same desirable, additional law judges for particular districts were provided for from time to time by special acts. The Act of April 14, 1874, P. L. 54, provided for the continuance of such additional law judges as had theretofore been

provided for by law in counties constituting separate judicial districts, and also provided for additional law judges in the Second, Eleventh, Twelfth, Twenty-fifth and Twenty-sixth districts.

The Judicial Apportionment Act of August 7, 1883, P. L. (1885) 323, specified the number of judges learned in the law in each district, and the subsequent Apportionment Acts of 1895, 1901 and 1921 provided similarly. By various acts passed since 1901, additional law judges have been provided in certain districts.

There are now sixty-seven counties in the Commonwealth, divided into fifty-six judicial districts as against twenty counties and five judicial districts in 1791, when such districts were first established.

The sub-division of judicial districts since 1791 has resulted in curiously numbering the present districts, the First and Second being in the extreme southeastern corner of the State, the Fourth in the far northern section, the Fifth and Sixth in the extreme western part, and so on.

As the counties were grouped together in judicial districts wholly for purposes of convenience, an enumeration of the counties which constituted the several judicial districts, respectively, prior to the time when almost every county became a district by itself, would be of no interest but for the fact that it seems a more logical method to treat of the courts of the various judicial districts, rather than of the courts of the various counties, in which latter case judges would appear or disappear in such counties without any obvious reason. Such a method would involve either a repetition of skteches of judges or else numerous cross references to the same. For this reason, sketches of the judges of the various judicial districts are given in sequence, instead of considering them in connection with each of the counties in which they respectively served.

The various counties of the Commonwealth have belonged at different times to judicial districts as follows:

Adams, Second District, 1800-1806; Ninth District, 1806-1835; Nineteenth District, 1835-1874; Forty-second District, 1874-1895; and Fifty-first District from 1895 to the present time.

Allegheny, Fifth District, 1791 to the present time.

Armstrong, Fifth District, 1800-1806; Tenth District, 1806-1874; and Thirty-third District from 1874 to the present time.

Beaver, Fifth District, 1800-1831; Seventeenth District, 1831-1866; Twenty-seventh District, 1866-1874; and Thirty-sixth District from 1874 to the present time.

Bedford, Fourth District, 1791-1824; Sixteenth District, 1824-1901; and Twentieth District from 1901 to the present time.

Berks, Third District, 1791-1849; Twenty-third District, from 1849 to the present time.

Blair, Sixteenth District, 1846-1849; Twenty-fourth District from 1849 to the present time.

Bradford, Eleventh District, 1810-1818; Thirteenth District, 1818-1895; and Forty-second District from 1895 to the present time.

Bucks, First District, 1791-1806; and Seventh District from 1806 to the present time.

Butler, Sixth District, 1806-1818; Fifth District, 1818-1831; Seventeenth District, 1831-1895; and Fiftieth District from 1895 to the present time.

Cambria, Tenth District, 1806-1849; Twenty-fourth District, 1849-1883; and Forty-seventh District, from 1883 to the present time.

Cameron, Fourth District, 1860-1883; and Twenty-fifth District from 1883 to the present time.

Carbon, Twelfth District, 1843-1844; Twenty-first District, 1844-1849; Twenty-second District, 1849-1874; Forty-third District, 1874-1901; and Fifty-sixth District from 1901 to the present time.

Centre, Fourth District, 1800-1851; Eighth District, 1851-1853; Twenty-fifth District, 1853-1883; and Forty-ninth District from 1883 to the present time.

Chester, Second District, 1791-1800; First District, 1800-1806; Seventh District from 1806-1821; and Fifteenth District from 1821 to the present time.

Clarion, Sixth District, 1839-1840; and Eighteenth District from 1840 to the present time.

Clearfield, Fourth District, 1822-1853; Twenty-fifth District, 1853-1883; and Forty-sixth District from 1883 to the present time.

Clinton, Fourth District, 1842-1851; Eighth District, 1851-1853; and Twenty-fifth District from 1853 to the present time.

Columbia, Eighth District, 1838-1851; Eleventh District, 1851-1856; and Twenty-sixth District from 1856 to the present time.

Crawford, Fifth District, 1800-1806; Sixth District, 1806-1870; and Thirtieth District from 1870 to the present time.

Cumberland, Fourth District, 1791-1800; Second District, 1800-1806; and Ninth District from 1806 to the present time.

Dauphin, Second District, 1791-1806; Ninth District, 1806-1815; and Twelfth District, 1815 to the present time.

Delaware, First District, 1791-1806; Seventh District, 1806-1821; Fifteenth District, 1821-1874; and Thirty-second District from 1874 to the present time.

Elk, Eighteenth District, 1843-1849; Fourth District, 1849-1874; Thirty-seventh District, 1874-1883; and Twenty-fifth District, from 1883 to the present time.

Erie, Sixth District, 1800 to the present time.

Fayette, Fifth District, 1791-1818; Fourteenth District, 1818 to the present time.

Forest, Eighteenth District, 1848-1874; and Thirty-seventh District from 1874 to the present time.

Franklin, Fourth District, 1791-1806; Ninth District, 1806-1824; Twenty-fourth District, 1824-1874; and Thirty-ninth District from 1874 to the present time.

Fulton, Sixteenth District, 1850-1874; Thirty-ninth District, 1874-1883; Forty-second District, 1883-1895; and Fifty-first District from 1895 to the present time.

Greene, Fifth District, 1796-1818; Fourteenth District, 1818-1901 and Thirteenth District from 1895 to the present time.

Huntingdon, Fourth District, 1791-1842; Twentieth District, 1842-1849; Twenty-fourth District, 1849-1883; Forty-ninth District, 1883-1895; and Twentieth District from 1895 to the present time.

Indiana, Tenth District, 1806-1874; and Fortieth District from 1874 to the present time.

Jefferson, Fifth District, 1804-1806; Tenth District, 1806-1830; Fourth District, 1830-1833; Eighteenth District, 1833-1895; and Fifty-fourth District, 1895 to the present time.

Juniata, Twelfth District, 1831-1835; Ninth District, 1835-1874; and Forty-first District from 1874 to the present time.

Lackawanna, Eleventh District, 1878-1883; and Forty-fifth District, from 1883 to the present time.

Lancaster. Always in the Second District.

Lawrence, Seventeenth District, 1849-1893; Fifty-first District, 1893-1895; and Fifty-third District from 1895 to the present time.

The Act of April 28, 1893, P. L. 27, established Lawrence county as the Fifty-first Judicial District, and the Act of May 14, 1893, P. L. 31, established Lebanon county as the Fifty-first Judicial District also. There were thus two Fifty-first Judicial Districts from May 14, 1893, until the passage of the General Judicial Apportionment Act of 1895.

Lebanon, Second District, 1813-1815; Twelfth District, 1815-1893; Fifty-first District, 1893-1895; and Fifty-second District from 1895 to the present time.

Lehigh, Third District, 1812-1874; and Thirty-first District from 1874 to the present time.

Luzerne, Third District, 1791-1806; Eighth District, 1806-1811; Eleventh District 1811-1841; Thirteenth District, 1841-1849; and Eleventh District from 1849 to the present time.

Lycoming, Third District, 1795-1806; Eighth District, 1806-1868; and the Twenty-ninth District from 1868 to the present time.

McKean, Thirteenth District, 1824-1833; Eighteenth District, 1833-1849; Thirteenth District, 1849-1851; Fourth District, 1851-1883; and the Forty-eighth District from 1883 to the present time.

Mercer, Sixth District, 1804-1831; Seventeenth District, 1831-1866; Twenty-eighth District, 1866-1874; and the Thirty-fifth District from 1874 to the present time.

Mifflin, Fourth District, 1791-1842; and the Twentieth District from 1842 to the present time.

Monroe, Eleventh District, 1836-1844; Twenty-first District, 1844-1849; Twenty-second District, 1849-1874; and the Forty-third District from 1874 to the present time.

Montgomery, First District, 1791-1806; Seventh District, 1806-1874; and the Thirty-eighth District from 1874 to the present time.

Montour, Eighth District, 1850-1851; Eleventh District, 1851-1874; and the Twenty-sixth District from 1874 to the present time.

Northampton, Third District, from 1791 to the present time.

Northumberland, Third District, 1791-1806; and the Eighth District from 1806 to the present time.

Perry, Ninth District, 1820-1874; and the Forty-first District from 1874 to the present time.

Philadelphia. Always in the First District.

Pike, Eleventh District, 1814-1849; Twenty-second District from 1849-1901; and the Forty-third District from 1901 to the present time.

Potter, Eighteenth District, 1833-1849; Thirteenth District, 1849-

1851; Fourth District, 1851-1883; Forty-eighth District, 1883-1901; and the Fifty-fifth District from 1901 to the present time.

Schuylkill, Third District, 1811-1815; Twelfth District, 1815-1844; and the Twenty-first District from 1844 to the present time.

Snyder, Twentieth District, 1855-1895, and the seventeenth District from 1895 to the present time.

Somerset, Fourth District, 1800-1806; Tenth District, 1806-1818; Fourteenth District, 1818-1824; and the Sixteenth District from 1824 to the present time.

Sullivan, Eighth District, 1847-1851; Thirteenth District, 1851-1856; Twenty-sixth District, 1856-1874; and the Forty-fourth District from 1874 to the present time.

Susquehanna, Eleventh District, 1810-1818; Thirteenth District, 1818-1840; Eleventh District, 1840-1851; Thirteenth District, 1851-1874; and the Thirty-fourth District from 1874 to the present time.

Tioga, Eleventh District, 1810-1818; Thirteenth District, 1818-1851; and the Fourth District from 1851 to the present time.

Union, Eighth District, 1813-1842; Twentieth District, 1842-1895; and the Seventeenth District from 1895 to the present time.

Venango, Sixth District, 1806-1849; Eighteenth District, 1849-1866; Twenty-eighth District, 1866-1874; and the Twenty-eighth District from 1874 to the present time.

Warren, Fifth District, 1800-1806, Sixth District, 1806-1833; Eighteenth District, 1833-1840; Sixth District, 1840-1874; and the Thirty-seventh District from 1874 to the present time.

Washington, Fifth District, 1791-1818; Fourteenth District, 1818-1866; and the Twenty-seventh District from 1866 to the present time.

Wayne, Third District, 1798-1811; Eleventh District, 1811-1849; and the Twenty-second District from 1849 to the present time.

Westmoreland, Fifth District, 1791-1806; and the Tenth District from 1806 to the present time.

Wyoming, Eleventh District, 1842-1856; Twenty-sixth District, 1856-1874, and the Forty-fourth District from 1874 to the present time.

York, Second District, 1791-1835; and the Nineteenth District from 1835 to the present time.

By referring to the chapters treating of the judges of the various judicial districts to which a county has belonged, the judges who have served in such county may readily be ascertained.

CHAPTER LII.

JUDGES OF THE FIRST JUDICIAL DISTRICT PRIOR TO 1875.

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Judges of the First Judicial District Prior to 1875.

By the Act of April 13, 1791, 3 Sm. L., 33, the First Judicial District was composed of the counties of Philadelphia, Bucks, Montgomery and Delaware. Chester county was added to it in 1800. By the Act of February 24, 1806, 4 Sm. L., 270, the other counties were assigned to a new district designated as the Seventh Judicial District, leaving the First Judicial District to consist only of the county and city of Philadelphia, as it has always since remained.

Prior to February 8, 1833, the courts of the First Judicial District had consisted of a president judge learned in the law and two associate judges not learned in the law, but by an act passed on that date, P. L. 23, it was provided that on the death, resignation or removal from office of either of the associate judges then serving, no appointment should be made to fill the vacancies, and thereafter the court should consist of a president judge, one associate judge learned in the law and one associate appointed under the existing laws of the Commonwealth. The court thus consisted thereafter of two judges learned in the law and one not learned therein, until the passage of the Act of March 11, 1836, P. L. 76, which provided that all judges of the court should be learned in the law.

Section 2 of the Act of February 3, 1843, P. L. 8, provided for one additional judge of the court learned in the law to be appointed for ten years, and the Eighth Section provided that any two judges of said court should have power to hold an orphans' court or any other court created by any form of law in the same manner as though an additional judge had not been appointed, but each of said four judges should have equal jurisdiction in criminal or civil courts.

The Act of April 15, 1851, P. L. 648, passed in order to carry out the provisions of the Constitutional Amendment of 1850 requiring the election of judges, provided that at the next general election, and whenever it should thereafter become necessary for an election of judges, the qualified electors of each of the several counties should vote for one person to serve as president judge of the judicial district in which such county should lie, and two persons to serve as associate judges of the several courts of such county. By Section 3 of said act the associate judges of the District Court, the Court of Common Pleas of the City and County of Philadelphia and the District Court of the County of Allegheny were required to be learned in the law. This act operated as a repeal of the Act of February 3, 1843, P. L. 8, which provided for an additional judge for the courts of the First Judicial District, and after the election held in 1851 there were but three judges of the courts of that district.

A third associate judge was provided for by the Act of March 26, 1866, P. L. 87, and a fourth by the Act of April 7, 1870, P. L. 1024, so that thereafter until January, 1875, when four separate courts were established for the First Judicial District, the courts of that district consisted of one president judge and four associate judges, all learned in the law.

By the Act of March 30, 1811, P. L. 138, establishing the District Court for the City and County of Philadelphia, the civil jurisdiction of the courts of the First District in all controversies exceeding $100 was taken away and conferred upon the district court. Later, however, by the Act of May 8, 1854, P. L. 679, the courts of the First Judicial District were given concurrent jurisdiction with the district court in all cases where the amount involved did not exceed $500, and also a concurrent jurisdiction in all equity cases.

After the passage of the Act of June 16, 1836, P. L. 784, the Supreme Court sitting at nisi prius had a concurrent jurisdiction with the district court in all civil causes where the amount involved exceeded $500, and this jurisdiction extended down to the adoption of the Constitution of 1874.

The criminal jurisdiction of the courts of the First Judicial District was shared by the Court of Criminal Sessions established by the Act of March 19, 1838, which was succeeded by the Court of General Sessions established by the Act of February 27, 1840, P. L. 61. This act established a court of three judges learned in the law, having exclusive jurisdiction of all matters of which the court of criminal sessions formerly had jurisdiction, and also of all matters of which the court of quarter sessions of the peace had jurisdiction, excepting certain executive functions, such as the licensing of taverns, granting of charters, etc. The said court also had concurrent jurisdiction with the court of oyer and terminer. This court was abolished by the Act of February 3, 1843, P. L. 8, which restored to the court of quarter sessions the jurisdiction which it had exercised before the creation of the court of criminal sessions and the court of general sessions.

The last judge of the Court of Common Pleas, who was unlearned in the law, was Roberts Vaux, who was appointed on October 30, 1835, and died on January 8, 1836.

James Biddle, the first president judge of the First Circuit, was of English descent, born at Philadelphia on February 18, 1731, and belonged to a distinguished family of prominent Whigs during the Revolution, who held conspicuous official stations. A brother, Edward, was a member of the Continental Congress; another, Charles, was a vice-president of Pennsylvania under the Constitution of 1776; and a third, Nicholas, was a commodore in the Continental Navy, and commanded the frigate *Randolph* which was blown up in action with the British ship *Yarmouth* off the coast of North Carolina in 1778. James Biddle studied law in the office of John Ross, then one of the foremost lawyers of the Province, and went to Berks county upon its creation in 1752, residing and practicing

his profession at Reading, in association with his brother Edward, for a considerable period. He was admitted to the Philadelphia bar on April 18th, 1765. In 1788 he was appointed prothonotary of the Court of Common Pleas of Philadelphia, and the same year was commissioned one of the associate judges of that county. He was commissioned president of the First Circuit, September 1, 1791, and held that office until his death on January 14, 1797.

The successor of Judge Biddle was John D. Coxe, a son of William Coxe and Mary Francis, a daughter of Tench Francis. He was a brother of Tench Coxe, who was at different times Assistant Secretary of the Treasury, Commissioner of Revenue, etc. Judge Coxe was born at Philadelphia, in 1752, and was entered at the University of Pennsylvania in 1766. He was admitted to the Philadelphia bar some time about 1776, the exact date not appearing in Martin's "Bench and Bar of Philadelphia." He was appointed president judge of the First Judicial District on the death of Judge Biddle in 1797, and served until 1805. On leaving the bench, he returned to practice, in which he continued until his death on October 17, 1824, at the age of seventy-two years. He was highly respected both at the bar and on the bench.

Judge Coxe was succeeded on July 1, 1805, by William Tilghman, who served only until June 1, 1806, when he resigned on his appointment as chief justice of the Supreme Court. A sketch of his life is given in another chapter of this work. He was succeeded by Jacob Rush, who had served as president judge of the Third Judicial District from 1791 to his appointment as president judge of the First Judicial District on June 1, 1806.

Jacob Rush was born at Philadelphia, on November 24, 1747, and graduated at the College of New Jersey in 1765. He was admitted to the bar of Philadelphia county on February 7, 1769, and to the bar of Berks county on May 10th of the same year. He was entered as a student of the Middle Temple in London about January, 1771. In 1782 he was elected a member of the Assembly from Philadelphia county, and was reëlected in the following year, resigning upon his appointment to the Supreme Bench to succeed John Evans, deceased. On the reorganization of the courts under the Constitution of 1790, he was appointed president judge of the Third Judicial District, including the counties of Berks, Northampton, Luzerne and Northumberland. He was commissioned on August 17, 1791, and selected Reading as his residence. David Paul Brown in his "Forum" says of him:

> He was a man of great ability, and great firmness and decision of character. He was also an eloquent man. Perhaps there are few specimens of judicial eloquence more impressive than those which he delivered during his occupation of the bench. . . . Some of his early literary essays were ascribed to Dr. Franklin, and for their terseness and clearness were worthy of him. . . .

Judge Rush's charges to the jury, generally, and his legal decisions, were marked by soundness of principle and closeness of reason. Having

been a judge of the Supreme Court and of the High Court of Errors and Appeals, he never appeared to be satisfied with his position in the Common Pleas; yet, his uprightness of conduct and unquestionable abilities, always secured to him the respect and confidence, if not the attachment, of his associates, the members of the bar, and the entire community. He was one of the gentlemen of the old school, plain in his attire, unobtrusive in his deportment; but while observant of his duties towards others, never forgetful of the respect to which he himself was justly entitled. . . .

He appears to have been somewhat despotic on the bench. The following is taken from the very interesting paper on Rush read by Louis Richards, Esqr., of the Berks county bar, at the meeting of the State Bar Association at Erie, in July, 1914:

In a case arising in the Orphans' Court of Berks County in 1804, involving an application to set aside an inquisition upon the real estate of a decedent, on the ground of a gross underestimate of the contents, Judge Rush ruled against the motion, but the associate judges, Morris and Diemer, expressed themselves in favor of it, and ordered that the inquisition be quashed and a new one made. The losing counsel announced their intention to appeal to the circuit court. Thereupon the president is reported to have replied: "Yes, do appeal. It is a monstrous and abominable decision, subversive of all justice, and calculated to throw everything into confusion. Every inquisition will be set aside now. Pandora's box will be opened by such proceedings. You better not appeal to the circuit court; appeal to the Supreme Court. You will have a full bench there. I remember a case which I determined which was reversed by two judges of the Supreme Court, and not two men who had their heads on ever decided more absurdly." Much to the Judge's mortification, no doubt, on the appeal being taken to the circuit court, the decision of the associate judges was affirmed. Pending the disposition of the case, on another occasion, he openly and sharply criticised the associates for not appearing promptly upon the bench at the hour fixed for opening court. In the next year the associates preferred charges against him to the legislature, with the view of his impeachment, but the committee on grievances reported the charges to be unfounded. The Judge brought a counter complaint against the associates, which was similarly disposed of, and also instituted a prosecution against the printer of a local newspaper for libel in making comments upon the administration alleged to be derogatory to his official character. . . .

Judge Rush was an ardent Federalist, and, like Judge Addison, who is elsewhere referred to herein, promulgated his political views in charges to grand juries.

On the reorganization of the courts by the Act of 1806, the City and County of Philadelphia was made a separate district, and Judge Rush was commissioned as its president judge in March of that year, in place of William Tilghman, appointed chief justice of the Supreme Court. He died on January 5, 1820, in the seventy-third year of his age.

The successor of Judge Rush was John Hallowell, a member of the

Society of Friends, an eminent lawyer and for a long time in an extensive and profitable business. "It was a matter of great gratification to the bar," says David Paul Brown in his "Forum," "that Judge Hallowell should accept of this place, and as long as he retained it he was totally unexceptionable. He was not, however, a man of much activity or industry, and as at the time referred to his associates were not learned in the law, the attendance of the president was therefore always required. This imposed upon him the necessity for unremitted attention to business, and rendered his situation rather irksome than agreeable."

Judge Hallowell was born at Philadelphia, on September 30, 1768. He studied law with Miers Fisher, and was admitted to the bar on March 17, 1788. He was elected a member of the General Assembly in 1815. He served as president judge of the First Judicial District from January 19, 1820, until April 22, 1825, when he resigned and was appointed an associate judge of the District Court of the City and County of Philadelphia. He resigned from the District Court in 1833, and died on January 17, 1839, in his seventy-first year. Judge Mitchell in his address on the District Court of Philadelphia, already referred to in another chapter, has the following in regard to Judge Hallowell: "In person he was short and stout, of florid complexion, and hair that turned white at a very early age. He was a noted epicure and a story is told of his having once very much disconcerted an eminent counsel, who was arguing a case before him, by calling out, in the midst of the argument, to one of the officers, 'Charles, the Court forgot to go to market this morning; go down to the market and buy the Court a shad for dinner; and Charles, be sure you get a fat one.'"

The successor of Judge Hallowell was Edward King, who had been admitted to practice in 1816. Judge King served from April 22, 1825, until December 1, 1851, a period of more than twenty-six years. From the same authority above quoted, it appears that his political party had for some time been desirous of placing him upon the bench, and, upon the the expiration of the term of Judge Morgan of the district court, King became an applicant for the vacant situation. Governor Shultze hesitated about giving him the appointment, but it was at last suggested that Judge Hallowell would probably accept the limited term in the district court and resign his life appointment in the common pleas, which he did, and Judge King was elevated to the bench of the common pleas. Mr. Brown gives the following account of him:

> Judge King was at this time a man of but little note at the bar, of a defective literary education, but a good lawyer, of a strong and energetic mind, and of great application and capacity. His appointment was not generally satisfactory. It was considered as the result of political influence, and was decried by one party, and not very strenuously supported by the other; and yet he proved, take him for all in all, perhaps the best judge that ever occupied that bench since it was first created, so far as regarded its criminal jurisdiction, and at least equal to any in the civil department of his judicial duties. His charges to the jury exhibited

great perspicuity and strength, and his written opinions, during a period of more than twenty years, were indicative of much research, discrimination and power. If his firmness had been equal to his legal learning, certainly no judge of the Common Pleas in Pennsylvania would have been entitled to a loftier position than he richly merited; indeed, it is doubtful whether there would have been his equal. As a criminal lawyer, he had no judicial competitor. The greatest objection to him, however, was his want of gravity on the bench. He never seemed to aim at any. His intercourse with his criers, and tipstaves, and reporters for the papers, was just as unreserved and familiar as with his nearest friends, and his example in these respects, long continued, has in its influence much impaired judicial propriety and dignity. In other words, his mantle has fallen upon some of his successors.

Though not rough, or eccentric, he was often found carelessly lounging in his chair; reading the newspapers; engaged in conversation with his associates, in the midst of an argument, and displaying the imperfections arising from a neglected training in early life. He improved, however, in his official manners, as time progressed, and when he was superseded under the new constitution, rendering the judiciary elective, he bore with him a reputation which great men might envy, and no man could despise or contemn.

His early literary education, as has been said, was defective; but such was his industry and capacity, that, although a critic might detect blemishes in his style, they were much more than counterbalanced by the clearness, nervousness, learning and wisdom of his opinions.

Of him it may be truly said, he has "done the State some service," and he will be remembered for his abilities long after his trivial faults are forgotten.

Judge King is also mentioned in a note on pages 8 and 9, Volume 3, of the seventh edition of Wharton's "Criminal Law," as follows:

I cannot in extracting [October, 1873] this passage from one of the least known of Judge King's charges avoid paying a tribute to that eminent jurist, whose death at a ripe old age took place but a few months since. His practice at the bar when he went on the bench had been very slight, and his literary education so incomplete that his appointment was received with general surprise. He never rose higher than president judge of the Philadelphia Common Pleas. He was nominated by President Taylor, it is true, as a judge of the Supreme Court of the United States, but was not confirmed by the Senate; and he failed, though having the advocacy of the bar as a body, in a nomination as judge of the Supreme Court of Pennsylvania. Yet limited as his judicial sphere, he is entitled to rank for philosophical breadth of judicial comprehension, for loyalty to the high moral purposes of the law, and for luminousness of style, with the few jurists of the age . . . in the fields to which his jurisdiction mainly directed him—criminal law, equity and ecclesiastical law, using the latter in its English sense as embracing probate and matrimonial cases, his opinions are entitled to rank with the first jurists of this or any other land.

As elsewhere appears, he was one of the commissioners appointed to revise the Criminal Code in 1858. Mr. Martin in his "Bench and Bar

of Philadelphia" says that Judge King was a powerful, heavy-built man, of a robust constitution. He died on May 8, 1873, in his eightieth year.

A list of the names of twenty-five associate judges who served from 1791 to 1833 appears in Martin's "Bench and Bar of Philadelphia." The writer has assumed that these gentlemen were laymen, because of the statement of David Paul Brown in his "Forum" that at the resignation of President Judge Hallowell in 1825, on his appointment to the District Court, both associates were laymen, and because there was no requirement of law that any associate should be learned in the law until the passage of the Act of February 8, 1833, P. L. 23, elsewhere referred to. Doctor Joel B. Sutherland was appointed an associate judge on March 4, 1833, after the passage of said act, but it is assumed that he was not a lawyer. The list of associate judges learned in the law is therefore taken as beginning with Archibald Randall, appointed on January 23, 1834, evidently after the death, resignation or removal from office of one of the lay judges in office at the time of the passage of the Act of February 8, 1833, P. L. 23. Judge Randall was admitted to the Philadelphia bar on April 13, 1818. He served as associate judge until 1842, when he was appointed judge of the United States District Court for the Eastern District of Pennsylvania, and served until his death on May 30, 1846, at the age of forty-nine years.

On the passage of the Act of March 11, 1836, P. L. 76, which provided that all the judges of the Philadelphia Court of Common Pleas should be learned in the law, John Richter Jones was appointed. He was admitted to the Philadelphia bar on September 22, 1827. He served until 1851. During the War of the Rebellion he was colonel of the 58th Pennsylvania Volunteers. He was killed in action at Batchelor's Station on May 23, 1863, aged fifty-nine years.

James Campbell was appointed an associate judge on April 2, 1842, succeeding Judge Randall. He was born in 1813, and was admitted to the Philadelphia bar on September 13, 1833. He served upon the bench until the fall of 1851. After his retirement he was appointed attorney general of the Commonwealth on January 21, 1852, and served until March 8, 1853, when he resigned on his appointment as Postmaster General, in which office he served until 1857, when he returned to practice. He died in 1892.

The Act of February 3, 1843, P. L. 8, having abolished the Court of General Sessions, which under the provisions of the Act of February 27, 1840, P. L. 61, had succeeded the Court of Criminal Sessions, established by the Act of March 19, 1838, to which courts had been given most of the criminal jurisdiction theretofore exercised by the court of quarter sessions, and which had a concurrent jurisdiction with the court of oyer and terminer, the Act of February 3, 1843, P. L. 8, provided an additional judge for the court of the First Judicial District, evidently on account of the increased criminal business devolving upon such court. Anson V. Parsons was appointed such additional law judge. At the time of his appointment he was serving as president judge of the Twelfth Ju-

dicial District, in connection with which district he is elsewhere mentioned. He served until 1851, when under the provisions of the Act of April 15, 1851, P. L. 648, the membership of the court was again reduced to three, although the amount of business transacted by it had not been decreased.

William D. Kelley was appointed an associate judge on March 13, 1847. He was born at Northern Liberties, Philadelphia, on April 12, 1814. He read law with James Page, and was admitted to practice on April 17, 1841. He served as assistant deputy attorney general for Philadelphia county and city in 1845. He was elected to succeed himself as a judge in 1851 and served until 1856, when he resigned. He took an active interest in politics, and in 1860 was elected to the Thirty-seventh Congress, and was subsequently reëlected to all succeeding Congresses down to and including the Fifty-first, constituting a length of service in the House probably unprecedented. He was chairman of the ways and means committee for many years, and on account of his earnest advocacy of a high tariff was popularly known throughout the United States as "Pig-Iron Kelley." He died on January 9, 1890.

Under the Constitutional Amendment of 1850, and the Act of April 15, 1851, P. L. 648, the office of judge became elective, and Oswald Thompson was elected president judge, and William D. Kelley and Joseph Allison were elected associate judges. Judge Kelley has already been mentioned.

Oswald Thompson was born at Philadelphia, on December 17, 1809. He graduated at Princeton College in 1828, studied law with Joseph R. Ingersoll, and was admitted to the bar on March 28, 1832. He soon acquired a remunerative practice. He was elected a judge of the First Judicial District in 1851, and was made president judge. He was reëlected in 1861, and served until his death on January 23, 1866, a victim of overwork. At the time of his death, Philadelphia had a population of more than 500,000 people, and the legal business of that population, aside from what was transacted by the Supreme Court sitting at nisi prius, had to be disposed of by six judges, three in the courts of the First Judicial District and three in the District Court. The criminal business fell, of course, wholly upon the three judges of the First Judicial District. Judge Thompson had not acquired a competence before going on the bench, and despite failing health continued in office until his death. A sketch of the life of Judge Thompson, read by Eli K. Price at a meeting of the American Philosophical Society, may be found in the twenty-third volume of the "Legal Intelligencer," at page 316.

Joseph Allison was born at Harrisburg, in 1820. He read law with John B. Adams, of that place, and was admitted to the Philadelphia bar on November 20, 1843. He was elected an associate judge of the Court of Common Pleas of Philadelphia in 1851, and reëlected in 1861. In 1866, on the death of Judge Thompson, president judge of that court, he was elected president judge thereof, the senior judge not then succeeding by seniority to the president judgeship. On the adoption of the Constitution of 1874 he became president judge of Court of Common

Pleas No. 1, and served by subsequent elections until his death on February 8, 1896.

Robert Taylor Conrad was appointed an associate judge on November 30, 1856, on the resignation of Judge Kelley. Judge Conrad was born at Philadelphia in 1810. In 1832 he was editor of the "Daily Commercial Intelligencer." He was elected city recorder of Philadelphia in 1835. On March 28, 1838, he was appointed a judge of the Court of Criminal Sessions, and on the substitution of the Court of General Sessions for that tribunal in 1840 he was appointed a judge thereof and served until the abolition of that court in February, 1843. On his retirement from the bench he became the editor of "Graham's Magazine," which was perhaps the leading literary periodical in the United States at that time. He was afterwards associate editor of the "North American," and wrote a number of plays. He was appointed an associate judge of the courts of the First Judicial District on November 30, 1856, as above stated, and served until his death on June 27, 1858.

James Riley Ludlow was born at Albany, New York, on May 3, 1825. He removed to Philadelphia in 1834, where his father, Rev. John Ludlow, D. D., was provost of the University of Pennsylvania for nearly twenty years. The son graduated from that institution in 1843 and studied law with William M. Meredith. He was admitted to the bar on July 24, 1846, He was elected a judge of the Court of Common Pleas in 1857, succeeding Judge Conrad, and reëlected in 1867. After the adoption of the Constitution of 1874, he was transferred to the Court of Common Pleas No. 3, as president judge thereof, and was again elected in 1875. He died on September 20, 1886.

William S. Pierce was born at New Castle, Delaware county, on September 3, 1815. He studied law with Charles Chauncey, and was admitted to the Philadelphia bar on June 11, 1845. On the death of Judge Thompson in 1866, he was appointed to the old Court of Common Pleas and elected to succeed himself in the same year. On the adoption of the Constitution of 1874, he was transferred to Court of Common Pleas No. 1, and was reëlected in 1876 and again in 1886. He died while in office, on April 4, 1887.

F. Carroll Brewster was born at Philadelphia, on May 15, 1825, and graduated from the University of Pennsylvania in 1841, studied law with his father, and was admitted to practice on September 7, 1844. He was elected city solicitor in 1862, and reëlected in 1865. An additional law judge of the Court of Common Pleas having been provided for by the Act of March 26, 1866, P. L. 87, he was elected to that office in October, 1866, and served in that capacity until 1869, when he resigned on his appointment to the office of attorney general, in which he served until 1872. On his retirement therefrom he engaged actively in practice, in which he continued until his death on December 30, 1898. Judge Brewster was the author of "Brewster on Practice," two volumes of which are devoted to practice in the common pleas courts, two to equity practice and two to orphans' court practice. He was a half-brother of Benjamin F. Brewster,

elsewhere referred to, who also served as attorney general of the Commonwealth.

Judge Brewster was succeeded by Edward M. Paxson, who was appointed on October 26, 1869, and elected to succeed himself on October 11, 1870. On the establishment of the numbered courts under the Constitution of 1874, he was transferred to Court of Common Pleas No. 1 on January 4, 1875, but did not take his seat thereon, having been elected to the Supreme Court in the preceding November, in connection with which tribunal he is elsewhere mentioned.

Thomas H. Finletter was born of Scotch Irish stock at Northern Liberties, Philadelphia, on January 1, 1820. He was educated in the public schools of that city, at Lafayette College and at the University of Pennsylvania, from which latter institution he graduated in 1843. He studied law with William A. Porter, and was admitted to the bar on October 16, 1845. He was a member of the General Assembly in 1849, and served as assistant city solicitor from 1860 to 1865. He was elected a judge of the Court of Common Pleas in October, 1870, under the provisions of the Act of April 7, 1870, P. L. 1024, which provided for the election of an additional associate judge. On the reorganization of the courts of Philadelphia in January, 1875, under the provisions of the Constitution of 1874, he became a judge of Court of Common Pleas No. 3, in which he served under subsequent elections until 1906, becoming president judge of that court in 1887, on the retirement of Judge Thayer, prothonotary of the courts of Philadelphia, in October, 1906, and succeeded him as such prothonotary, serving in that office until his death on April 1, 1907.

The Court of Common Pleas and the District Court having been merged into each other by the Constitution of 1874, by the schedule of which the members of said courts were transferred to the numbered courts then established, sketches of the judges of the district court are here inserted before the history of the numbered courts is taken up.

CHAPTER LIII.

JUDGES OF THE DISTRICT COURT OF THE CITY AND COUNTY OF PHILADELPHIA.

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JUDGES OF THE DISTRICT COURT OF THE CITY AND COUNTY OF PHILADELPHIA.

The District Court of Philadelphia City and County has been referred to in another chapter in which the various acts establishing and continuing the same have been mentioned and its jurisdiction defined. From 1821 to 1870 the court consisted of one president judge and two associate judges, all learned in the law, but by the Act of April 7, 1870, P. L. 1024, an additional associate judge was provided for, and by the Act of March 23, 1872, P. L. 540, another one was authorized, so that on the abolition of the court in January, 1875, under the provisions of the Constitution of 1874, and the distribution of its judges among the new numbered courts of common pleas, the court consisted of one president judge and four associate judges.

The first president judge of that court was Joseph Hemphill, who was born in Chester county in 1770. He received an academic education and was admitted to the bar in August, 1793. In 1800 he was elected to Congress as a Federalist and served one term. He removed to Philadelphia in 1803, and was appointed the first president judge of the district court of that city and county and was commissioned on March 6, 1811, in which capacity he served until 1818. He was again elected to Congress as a Jacksonian Democrat in 1819 and served until 1821, after which he served in the General Assembly from 1831 to 1832. He died in Philadelphia, on November 29, 1842, at the age of seventy-two years.

On the establishment of this court, Anthony Simmons and Jacob Sommer were appointed associate judges. They were not learned in the law, and were the only laymen who were ever appointed to the bench of that court. Judge Mitchell gives the following account of these gentlemen:

Anthony Simmons, one of the lay or "wing" judges, as they were popularly called in that day, was a native of New England, and had been a goldsmith. He appears to have been prosperous, for we find him in the city directories of 1809 and 1911, as "late goldsmith, 27 Sassafras street." In 1813, he appears in full figure as "Associate Judge of the District Court," and perhaps in deference to his new honors, has moved to the more aristocratic neighborhood of "100 South Eighth street." He was a tall, fine-looking man, and appears to have retained the fondness for military honors and display which he acquired on training days in his native New England. He was a colonel in the militia, and took an active part in the politics and public affairs of the day. Neither his manners nor his habits were in accord with what is now expected of judicial sta-

tion; but his integrity was not doubted, and by virtue of diligent attention (which is attested by the minute-books) and good natural parts, he appears to have filled the position he held with acceptance, as we find him reappointed by Governor Snyder in 1817.

Jacob Sommer, the other lay judge, was a farmer, and lived in Byberry township. He was of Pennsylvania German descent, and discharged the duties of his office with the patient good sense and modesty that characterized his race. Probably owing to his residence in the country, he does not appear from the minute-books to have given as much time to his duties as the other judges, but was nevertheless reappointed in 1817, and continued to sit until the expiration of his commission in 1821. In 1823, he was appointed a justice of the peace for Bristol, Germantown and Roxborough, after which time I have not been able to find any trace of him.

By an Act of March 9, 1814, an additional law judge, to preside in the absence of the president judge, was provided for, and Thomas Sergeant was appointed to that position and served until 1817. He was afterwards appointed an associate judge of the Supreme Court, in connection with which tribunal he is elsewhere mentioned.

Joseph Borden McKean, the eldest son of Chief Justice and Governor McKean, was born on June 28, 1764. He graduated at the University of Pennsylvania in 1782, and was admitted to the Philadelphia bar on September 10, 1785, and to the Chester county bar in the same year. He served with the First City Troop in the Whiskey Insurrection. He was appointed attorney general on May 10, 1800, succeeding Jared Ingersoll, and served until January, 1809. On March 27, 1817, he was appointed an associate judge of the district court, preceding Judge Sergeant, and president judge on October 1, 1818. On the reorganization of that tribunal in 1821, he was again appointed an associate judge on March 17th of that year, and president judge thereof on March 21, 1825, in which capacity he served until his death on September 3, 1826.

Joseph Barnes was appointed an associate judge on October 1, 1818, and on October 4, 1826, was appointed president judge, in which capacity he served until 1835. He was admitted to the bar of Philadelphia on September 16, 1805, and died on April 22, 1839, at the age of sixty-one years.

Judge Barnes was at various times prothonotary of the Supreme Court and register of wills, besides holding the office of professor of the common and statute law of Pennsylvania at the Law Academy. He was a good lawyer, says Judge Mitchell, and a man of great natural quickness, but small in person, shabby in his dress, and remembered chiefly by his cotemporaries for his eccentricities and his inveterate habit of joking both on and off the bench. Charles Pidgeon was for many years crier of the court, and it is related in illustration of Barnes' absentmindedness that he would frequently ask "Charles, what is your first name, Charles?"

Judge Barnes was succeeded in 1821 by Benjamin Rawle Morgan, who was admitted to the Philadelphia bar in August, 1785. He was a

large man, of florid complexion, with the gracious and rather elaborate manners of the old school. He came of a Quaker family, and, like many others, when he left the plain garb he took to lace ruffles, wore his hair powdered and in a queue, and became noted for his care and attention to dress and personal appearance. He went early into political life as an ardent Federalist, and served as a member of the legislature. He was a sound lawyer and a man of character and mark in his day. He died on November 19, 1840, at the age of seventy-six years.

On the reorganization of the court in 1821, Jared Ingersoll was appointed president judge, on March 19, 1821, and served until December 18, 1822. His biography appears elsewhere herein.

Judge Ingersoll was succeeded by Moses Levy, appointed president judge on December 18, 1822, and serving until March 21, 1825. Judge Levy was born in 1756, and was admitted to the Philadelphia bar on March 19, 1778. He died on May 9, 1826. He is better known today as a brother of Samson Levy than on account of his judicial services. Samson Levy was born in 1761, and studied law with his brother Moses. He at one time had a very large practice at the Philadelphia bar. An interesting sketch of him may be found in David Paul Brown's "Forum."

John Hallowell was appointed an associate judge on March 27, 1825. He had been president judge of the Court of Common Pleas, in connection with which tribunal he is elsewhere mentioned.

Charles S. Coxe was a great-grandson of Tench Francis, and consequently a cousin of Chief Justice Tilghman and connected with the Shippen and Allen families.. He was a nephew of John D. Coxe, second president judge of the courts of the First Judicial District. He was born in 1790 and admitted to practice on June 1, 1812. He practiced until 1826, during a part of which time he was deputy attorney general. He was appointed an associate judge of the District Court on October 24, 1826, and served until 1835. He was the owner of valuable coal lands in Luzerne county, and on his retirement from the bench devoted himself wholly to the development of them. He died at Drifton, Luzerne county, on November 19, 1876.

Thomas McKean Pettit was appointed an associate judge on February 16, 1833, and president judge on April 22, 1835, serving in that capacity until 1845. He was born in 1797 and was admitted to the bar of Philadelphia county on April 13, 1818. He acted for a time as deputy prosecuting attorney. He was city solicitor of Philadelphia in 1820, a member of the General Assembly in 1830, and of select council in 1831. After leaving the bench he served as United States District Attorney for the Eastern District of Pennsylvania from 1845 to 1849, and was appointed Director of the United States Mint on April 4, 1853, but held that office less than two months, dying on May 30, 1853, in the fifty-seventh year of his age.

George McDowell Stroud was appointed an associate judge on March 30, 1835. He was born in 1793 at Stroudsburg. He entered Princeton College at the age of fifteen and graduated with distinguished honors at

the age of nineteen. He entered the office of Judge Hallowell in 1816 and was admitted to practice on June 28, 1819. He was appointed a judge of the district court on March 30, 1835, succeeding Judge Coxe, and served in that capacity for a term of ten years, after which he returned to practice, but was again appointed on February 5, 1848, and served until 1851, when he was elected to succeed himself and served until 1869, having declined the position of president judge when Judge Sharswood was elected to the Supreme Bench. He died in 1875.

John King Findlay was appointed an associate judge on February 5, 1848. He afterwards was elected president judge of the Third Judicial District, in connection with which he is elsewhere mentioned.

Judge Pettit was succeeded by Joel Jones, appointed an associate judge on April 22, 1835. He was born on October 22, 1796, in Coventry, Connecticut. He graduated from Yale College in 1817, and studied law in the Litchfield Law School. On the completion of his studies he removed to Wilkes-Barre, with his parents, and was admitted to the bar, but settled in practice at Easton. He served as associate judge until 1845, when he became president judge and continued in that office until January, 1848, when he resigned to accept the presidency of Girard College. He resigned that office, however, in 1849, having been elected mayor of the old city of Philadelphia. At the end of his term as mayor he returned to the bar, and remained in practice until his death on February 3, 1860, at the age of sixty-four years. The following is from Judge Mitchell's account of him:

> He was a sound and learned lawyer, particularly well-versed in black letter and ecclesiastical law, to which his tastes inclined him. In person he was of medium height, inclined to stoutness; of very dark complexion, and black hair. His eyes were black and deeply set under heavy black brows, which, in his latter years, as I remember him, to a careless observer, gave his face an air of sternness very far removed from his gentle and amiable nature. He dressed uniformly in black cloth, and had very much the appearance and manner of a clergyman, for which, as the story is told, he was mistaken upon going out to Girard College after being elected its president, and refused admittance, in obedience to the well-known provision of Girard's will.

George Sharswood was appointed an associate judge on April 8, 1845, and president judge on February 1, 1848. He was elected to succeed himself in 1851, and served by subsequent reëlections until 1867 when he was elected a judge of the Supreme Court, in connection with which tribunal he is elsewhere mentioned.

John I. C. Hare was elected an associate judge in 1851, and served by subsequent elections until 1875, when he became president judge of Court of Common Pleas No. 2, in connection with which he is elsewhere mentioned. He became president judge of the district court on April 1, 1867.

M. Russell Thayer was appointed an associate judge on March 27, 1869, and subsequently elected to succeed himself, serving until 1875.

when he became president judge of Court of Common Pleas No. 4, in connection with which he is elsewhere mentioned.

The Act of April 7, 1870, P. L. 1024, having provided for the appointment of an additional associate judge, James Lynd was elected to that office and served until January, 1875, when he was transferred to Court of Common Pleas No. 3. Judge Lynd was born at Philadelphia in 1826, a grandson of the Rev. Peter Keyser, of Germantown. He was educated in the public schools of that city and graduated at the Central High School. He was afterwards a professor in Delaware College, and while so employed wrote "Lynd's Etymology." He was admitted to the bar on April 11, 1849. He was afterwards president of select council, and served as city solicitor from 1866 to 1868. While serving on the bench of Court of Common Pleas No. 3, he was injured by a pet cow which pulled a rope around his finger, from which tetanus developed and he died as the result thereof on June 30, 1876.

James T. Mitchell was elected an associate judge on December 4, 1871, and served until 1875, when he became an associate judge of Court of Common Pleas No. 1. He afterwards became a judge of the Supreme Court, in connection with which he is elsewhere mentioned.

The Act of March 23, 1872, P. L. 540, provided for the appointment of another associate judge, and Amos Briggs was appointed to that office and afterwards elected thereto. He was born at Pennsbury Manor, Bucks county, on January 22, 1825. He was educated in the public schools, after leaving which he taught school. He studied law in the office of William R. Dickinson and afterwards with Theodore Cuyler. He was admitted to the Philadelphia bar on October 19, 1848. He was elected an associate judge of the District Court in 1872, and became an associate judge of Court of Common Pleas No. 4 in January, 1875. He served until the expiration of his term in January, 1883, having been defeated for a reëlection by Michael Arnold, and returned to practice.

CHAPTER LIV.

JUDGES OF THE FIRST JUDICIAL DISTRICT FROM 1875 TO THE PRESENT TIME.

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By Section 6 of Article V of the Constitution of 1874 it was provided as follows:

In the counties of Philadelphia and Allegheny all the jurisdiction and powers now vested in the district courts and courts of common pleas, subject to such changes as may be made by this Constitution or by law, shall be in Philadelphia vested in four, and in Allegheny in two, distinct and separate courts of equal and coördinate jurisdiction, composed of three judges each; the said courts in Philadelphia shall be designated respectively as the court of common pleas number one, number two, number three and number four. . . .

By the Amendment to the Constitution of November 7, 1911, the creation of a fifth court in Philadelphia was provided for, although such a court had previously been established without constitutional authority by the Act of July 18, 1901, P. L. 669.

The 18th Section of the Schedule of the Constitution of 1874 provided as follows:

The courts of common pleas in the counties of Philadelphia and Allegheny shall be composed of the present judges of the district court and court of common pleas of said counties until their offices shall severally end, and of such other judges as may from time to time be selected. For the purpose of first organization in Philadelphia the judges of court number one shall be Judges Allison, Pierce and Paxson; of the court number two, Judges Hare, Mitchell, and one other judge to be elected; of the court number three, Judges Ludlow, Finletter and Lynd; and of the court number four, Judges Thayer, Briggs, and one other judge to be elected. The judge first named shall be the president judge of the said courts respectively, and thereafter the president judge shall be the judge oldest in commission; but any president judge, reëlected in the same court or district, shall continue to be president judge thereof. . . .

Court of Common Pleas No. 1.—This court was organized in January, 1875, with the following judges: Joseph Allison, president judge, and William S. Pierce and Edward M. Paxson, associate judges. These judges were all taken from the old Court of Common Pleas, in connection with which sketches of their lives have already been given. Judge Paxson never took his seat as a member of this court, having been elected to the Supreme Court in the November preceding. He was succeeded by Craig Biddle.

Craig Biddle, a son of Nicholas Biddle, president of the Bank of the United States, was born on January 10, 1823. He was admitted to the bar on December 2, 1844, and was elected to the General Assembly in 1849. During the War of the Rebellion he served upon the staffs of General Robert Pattison and Governor Curtin, and as a member of the latter organized a number of regiments. On the promotion of Judge Paxson to the Supreme Bench in 1874, Mr. Biddle was appointed his successor and in the ensuing fall was elected to succeed himself, and through subsequent elections served until January, 1907. He became president judge of Court of Common Pleas No. 1 in 1896. On his resignation in 1907 he was appointed prothonotary of the Courts of Common Pleas of Philadelphia, and held that position until his death on July 26, 1910.

Francis Amedee Bregy was born at Centreville, Bucks county, on September 7, 1846. He entered the University of Pennsylvania in 1862, but left at the close of the second term of his sophomore year. He served as a second lieutenant in the 215th Regiment Pennsylvania Volunteers from 1864 to the end of the Rebellion. He was admitted to the Philadelphia bar on October 17, 1867. He served as first assistant district attorney from 1872 to 1874, and from 1881 to 1887. He was appointed an associate judge of Court of Common Pleas No. 1, in April, 1887, succeeding William S. Pierce, and was elected to succeeed himself in November of that year, and reëlected in 1897 and 1907, becoming president judge of that tribunal in 1907, on the retirement of Judge Biddle.

Abraham M. Beitler was born on July 8, 1852, at Philadelphia, and was educated in the public schools of that city. He studied law with C. Stuart Pattison, and was admitted to the bar in 1873. He was appointed assistant city solicitor by William Nelson West, and was continued in that office by his successor, Charles F. Warwick. He was appointed Director of Public Safety by Mayor Stuart in 1891, and continued in office under his successor. He was appointed a judge of Court of Common Pleas No. 1, succeeding Joseph Allison, on the retirement of the latter in 1896 was elected to succeed himself in the fall of that year and reëlected in 1906, resigning early in 1907, shortly after beginning his second term, when he resumed practice as a member of the firm of Dixon, Beitler & McCouch, of which he is now the senior member.

Edward Walter Magill was born in Solebury township, Bucks county, on January 27, 1858. He was educated in the public schools and at Swarthmore College. H studied law with Orlando Harvey, of Chester, and later graduated from the Law School of the University of Pennsylvania in 1881. He was admitted to the bar on June 6, 1881, and entered the office of Robert W. Alexander and Charles F. Warwick, and remained with them until 1885, when he formed a partnership with Carroll R. Williams. When Mr. Warwick was elected city solicitor, Judge McGill became his first assistant, and about the same time formed a new partnership with Mr. Alexander under the firm name of Alexander & Magill. On the resignation of Judge Beitler he was appointed to succeed him, on

February 11, 1897, and was elected to succeed himself in the same year. He died on April 20, 1913.

John Lippincott Kinsey was born at Philadelphia on August 29, 1846. He graduated from a school in Haddington, New Jersey, and was admitted to the junior class at Yale at the early age of eighteen years. He served as a member of the thirteenth ward school board for a number of years, and was a member of the board of education. He was appointed assistant district attorney in 1881 and served in that capacity for fourteen years. He was elected city solicitor in 1896 and served in that office for twelve years. On the resignation of Judge Craig Biddle from Court of Common Pleas No. 1, in 1907, he was appointed to succeed him and elected to succeed himself in the fall of that year. He died while in office on January 23, 1915.

William H. Shoemaker was born at Philadelphia in 1859. He was educated in the public and private schools of that city. He read law with Charles F. Morris and Lewis F. Benson, at the same time attending the Law School of the University of Pennsylvania, from which institution he graduated in 1880. He was a member of common council of Philadelphia in 1892-4, and of the board of education from 1901 to 1911. He was appointed a member of the board of viewers of Philadelphia county in 1911 and afterwards became president of the board. On the death of Judge Kinsey in 1915, he was appointed his successor, and elected to succeed himself in the fall of that year.

Court of Common Pleas No. 2.—This court was organized in January, 1875, with J. I. Clark Hare, president judge, and James T. Mitchell and Joseph T. Pratt, associate judges. Judges Hare and Mitchell were transferred from the District Court. Judge Pratt was elected in November, 1874, and assigned to Court No. 2.

John I. Clark Hare was born at Philadelphia, on October 17, 1816, the son of Doctor Robert Hare, for many years professor of chemistry at the University of Pennsylvania. The son graduated from that institution in 1834 and took up the study of chemistry under his father's direction, but afterwards entered the law office of William M. Meredith, and was admitted to the Philadelphia bar in 1841. He was nominated on the Whig ticket and elected a judge of the District Court of Philadelphia in 1861, of which he became president judge on December 1, 1867, on the promotion of Judge Sharswood to the Supreme Bench. He served in that capacity until the adoption of the Constitution of 1874, under the provisions of which he became president judge of Court of Common Pleas No. 2, at which he served by subsequent elections until his resignation in 1897. He died on December 29, 1905, at the age of ninety years. He was the author of "Hare on Constitutional Law" and "Hare on Contracts," as well as of many essays on legal subjects. In connection with Horace Binney Wallace he published "American Leading Cases in Law," "Smith's Leading Cases in Law," and "White & Tudor's Leading Cases in Equity."

James T. Mitchell was elected an associate judge of the District

Court on December 4, 1871, and was transferred to Court of Common Pleas No. 2 in January, 1875, on the organization of that court, in which he served until his election to the Supreme Court in November, 1888, in connection with which he is elsewhere mentioned.

The third member of Court of Common Pleas No. 2 on its organization was Joseph Towner Pratt, who came originally from Bradford county. During the War of the Rebellion he served as a major of volunteers, and at the conclusion of the war was in command of the District of Charleston, South Carolina. He was a teacher for a time at Girard College. He was admitted to the Philadelphia bar on June 1, 1867. In November, 1874, he was elected an associate judge of the Court of Common Pleas, and was assigned to Court of Common Pleas No. 2. He died on March 27, 1877, at the age of thirty-nine years.

Judge Pratt was succeeded by D. Newlin Fell, who was appointed on March 3, 1877, elected in November of that year, and reëlected in 1887. He served until his election to the Supreme Court in 1894, in connection with which tribunal he is elsewhere mentioned.

On the promotion of Judge Fell to the Supreme Court, he was succeeded by Theodore F. Jenkins, who was born at Philadelphia, on April 6, 1849, and was educated in the public schools of that city. He studied law with James T. Mitchell and afterwards with Thomas R. Elcock. He was admitted to the bar on April 30, 1870. On the resignation of Judge Fell, he was appointed his successor, and served from November, 1895, until January, 1896. On his retirement from the bench he resumed practice, in which he is still actively engaged.

Samuel Whitaker Pennypacker was born at Phoenixville, on April 9, 1843. He removed to Philadelphia with his father at an early date, where he attended the public schools of that city. After the death of his father he returned to Phoenixville, where he attended the Grovemont Seminary and prepared for Yale University, but was prevented from entering that institution. He taught school in 1862, and in 1863 enlisted in Company F, 26th Pennsylvania Emergency Regiment, which saw service at Gettysburg. On his return from military service, he entered the Law Department of the University of Pennsylvania, from which institution he graduated in 1866, having been registered at the same time as a student in the office of Peter McCall. He began practice in 1866 and continued in the same until his appointment in 1889 as a judge of Court of Common Pleas No. 2 of the First Judicial District, succeeding James T. Mitchell, elected a judge of the Supreme Court of Pennsylvania. He was elected to succeed himself in the fall of that year, and reëlected in 1899, becoming president judge of that court in 1897. He resigned in 1902, on his election as governor of the Commonwealth, in which office he served until January, 1907, when he returned to practice. In 1911 he was appointed a member of the State Railroad Commission, and in 1913, on the abolition of that body, was appointed a member of the Public Service Commission. Judge Pennypacker was the author of "Pennsylvania Colonial Cases," Pennypacker's "Supreme Court Reports," a "Digest of the Common Law

Reports," and of numerous historical and biographical sketches. He was the president of the Historical Society of Pennsylvania for many years. He died September 2, 1916.

Mayer Sulzberger was born at Heidelsheim, Baden, on June 22, 1843. He graduated from the Central High School at Philadelphia in 1859, and was admitted to the bar in 1865. He practiced in Philadelphia from 1865 to 1895, when he was elected a judge of Court of Common Pleas No. 2 and was reëlected in 1905. He became president judge in 1903 and served until January, 1916. He succeeded Theodore F. Jenkins.

William White Wiltbank was born at Philadelphia, on March 27, 1840. He was educated by private tutors. He entered the army in 1863, and was mustered out in October, 1865, with the rank of major. He read law with Eli K. Price, and was admitted to the bar on February 10, 1866. He was appointed to fill the vacancy in the Court of Common Pleas No. 2 occasioned by the death of Judge Hare, in December, 1896, and in November, 1897, was elected to succeed himself, and was reëlected in 1907. He died on January 23, 1914.

Norris S. Barrett was born at Philadelphia, on August 23, 1862, and educated in the public and private schools of that city. He was admitted to the bar in 1883. In 1890 he was appointed assistant city solicitor by Solicitor Warwick, and reappointed by his successor, John L. Kinsey. He served as first assistant district attorney from 1901 to 1902. He was elected an associate judge of Court of Common Pleas No. 2 in November, 1902, and reëlected in 1912. He became president judge in 1916, on the retirement of Judge Sulzberger.

On the death of Judge Wiltbank in 1914, he was succeeded by D. Webster Dougherty, a son of the well known lawyer and orator, Daniel Webster Dougherty, who was born in 1857 and educated at the Georgetown University and the University of Pennsylvania. He studied law in his father's office, and was admitted to the bar in 1879. He was one of the five additional law judges of the courts of Philadelphia appointed in 1913, under the Act of March 29, 1913, P. L. 20, which act was held unconstitutional. On the death of Judge Wiltbank he was appointed his successor, and served until January, 1916. He died after a brief illness, on September 24, 1917.

Judge Dougherty was succeeded by Joseph R. P. Rogers, who was born at Tamaqua, on March 17, 1876, and removed to Philadelphia in 1881. He was registered with the firm of Randall & Flaherty. After his admission to the bar he served at different times as assistant district attorney and as assistant city solicitor. He was elected to succeed Judge Dougherty in November, 1915.

Judge Sulzberger was succeeded by H. N. Wessell, who was born in Nebraska in 1870, removing to Philadelphia in 1877. He graduated from the University of Pennsylvania in 1891 and was admitted to the bar in the same year, having read law with Judge Sulzberger. He was a member of the firm of Wessell & Aarons, and of the board of law examiners of Philadelphia. He has been active in Jewish and other charities.

He was elected an associate judge of Court of Common Pleas No. 2 in November, 1915. He died in 1920.

Hon. Horace Stern was born in Philadelphia, August 7, 1878. He attended the public schools and the Central High School of Philadelphia, graduating from that institution in 1895. He graduated from the College Department of the University of Pennsylvania with the degree of B.S. in 1899, and also graduated from the Law Department of the University of Pennsylvania in 1902 with the degree of LL.B. He began the practice of law in Philadelphia in 1902, and continued therein until March 18, 1920, on which date Governor Sproul appointed him judge of the Court of Common Pleas No. 2 for Philadelphia County, to succeed Hon. Henry N. Wessel, deceased, and was elected to succeed himself the following fall.

Court of Common Pleas No. 3.—This court was organized in January, 1875, with James R. Ludlow, president judge, and James Lynd and Thomas K. Finletter, associate judges. Judges Ludlow and Finletter were transferred from the old Court of Common Pleas, and Judge Lynd from the District Court, in connection with which they are elsewhere mentioned.

William H. Yerkes was born in Montgomery county, and graduated at Lewisburg College. He read law with Daniel H. Mulvaney, of Norristown, and was admitted to the Montgomery county bar in 1859. He served in the War of the Rebellion as major of the 179th Pennsylvania Volunteers. At the end of the war he removed to Philadelphia, and was admitted to the bar of that county on August 28, 1865. On the death of Judge Lynd on July 1, 1876, he was appointed his successor, and elected to succeed himself in the fall of that year. He died on October 10, 1885.

James Gay Gordon was born at Philadelphia, on November 16, 1855. He was educated in the public schools of that city and graduated from the Central High School in 1873. He studied law in the office of Lewis S. Cassiday, and was admitted to practice in 1876. He was elected to the State Senate in 1880, and served one term of four years. He was appointed an associate judge of Court of Common Pleas No. 3 in 1885, succeeding Judge Yerkes, deceased, and elected to succeed himself in 1886, and reëlected in 1896. He resigned in 1898, since which time he has been actively engaged in practice.

Henry Reed was born at Philadelphia, on September 22, 1846. He graduated from the University of Pennsylvania, studied law with E. Spencer Miller, and was admitted to the bar on October 16, 1869. He is the author of "Reed on the Statute of Frauds," published in 1881. He was appointed an associate judge of Court of Common Pleas No. 3 on November 12, 1886, and was elected to succeed himself in November, 1887. He died on February 23, 1896, while in office.

Charles Barnsley McMichael was born at Philadelphia, and educated in the schools of that city and Harvard University, from which institution he graduated in 1870. He began practice in September, 1872, having

been admitted to the bar on May 25th of that year. He was an assistant city solicitor from 1881 to 1893. He was appointed an associate judge of Court of Common Pleas No. 3, in 1897, succeeding Henry Reed, and became president judge of that tribunal in 1907, on the retirement of Judge Finletter. He is the author of a work on "The Municipal Law of Philadelphia."

Henry Jefferson McCarthy was born at Philadelphia, on October 11, 1845. He was educated in the public schools of that city and graduated from the Central High School on February 13, 1863. He studied law with William A. Porter, a former associate justice of the Supreme Court of Pennsylvania, and was admitted to the bar on November 17, 1868, after which he served as an assistant to his preceptor for nine years. On the creation of the Superior Court in 1895 he was appointed an associate justice, but failed of a nomination to succeed himself in the fall of that year. On the resignation of James Gay Gordon from the bench of Common Pleas Court No. 3, in 1898, he was appointed his successor, and elected to succeed himself in November, 1899. He died on July 21, 1903.

William C. Ferguson, a son of Joseph C. Ferguson, formerly a judge of the Orphans' Court, was born at Philadelphia, in January, 1864. He was educated in the public schools of that city and graduated from the high school in 1882. He studied law with his father, and was admitted to the bar in June, 1885. On the retirement of Judge Finletter from Court of Common Pleas No. 3, he was appointed his successor on November 28, 1906, and was elected to succeed himself in November, 1907.

Howard A. Davis was born at Philadelphia, on February 12, 1862. He read law in the office of Charles F. Warwick, and attended the Law School of the University of Pennsylvania at the same time, from which institution he graduated in 1883, and was admitted to the bar. After his admission he was associated in practice with Mr. Warwick for some time, and on the latter's election to the office of city solicitor served with him as an assistant solicitor. He served as a lieutenant-colonel on the staff of Governor Hastings, and was appointed judge advocate general of the First Brigade, in 1907. He was a presidential elector in 1908, and was elected to select council in 1909. He was appointed to succeed Judge Von Moschzisker as a member of Court of Common Pleas No. 3 on January 5, 1910, and was elected to succeed himself in the fall of that year.

Court of Common Pleas No. 4.—This court was organized in January, 1875, with M. Russell M. Thayer, president judge, and Amos Briggs and Thomas R. Elcock, associate judges. Judges Thayer and Briggs were transferred from the District Court. Judge Elcock was elected in 1874.

Russell M. Thayer was born on January 27, 1819, at Petersburg, Virginia. He was educated at the Mt. Pleasant Classical Institute, Amherst College, and the University of Pennsylvania, from which last named institution he graduated in 1840. He studied law under Garrick Mallory, and was admitted to the bar of Philadelphia county on September 5, 1842. He was a member of the Thirty-eighth and Thirty-ninth Congresses,

serving from 1863 to 1868, and was elected a judge of the District Court of Philadelphia on December 3, 1867, in which capacity he served until the abolition of that court by the Constitution of 1874, when he became president judge of Court of Common Pleas No. 4, and served by subsequent reëlections until October 22, 1896, when he resigned and was appointed prothonotary of the Courts of Common Pleas of Philadelphia, which office he filled at the time of his death on October 14, 1906.

Thomas Robert Elcock was born at Philadelphia, on August 16, 1838. He was educated in the public schools, the Madison Grammar School, the Central High School and Villa Nova College. Owing to severe illness, his education was completed under private tutors. He entered the law office of F. Carroll Brewster in 1857, and was admitted to the bar on September 8, 1859. He served during the War of the Rebellion, in which he attained the rank of captain. He remained with his preceptor until Mr. Brewster was made a judge, and then succeeded to his practice. He was elected a judge of the Court of Common Pleas of Philadelphia County in November, 1874, and became by lot attached to Court No. 4, where he served from January, 1875, to January, 1885, when he returned to the bar and became actively engaged in practice. He died on September 5, 1907.

Michael Arnold was born at Philadelphia, in 1840. He was educated in the public schools, and graduated from the Central High School in 1857. He began the study of the law in 1859, and was admitted to the bar in 1863, in which year he enlisted in the army, and was afterwards paymaster therein for a while. After his service in the army he returned to Philadelphia and the practice of his profession. He was elected a judge of Court of Common Pleas No. 4 in 1882, and was reëlected in 1892 and again in 1902, becoming president judge of that tribunal on the retirement of M. Russell Thayer in 1897. It was Judge Arnold's ambition to be upon the Supreme Bench, and in 1888 the Democratic nomination was tendered to him, but inasmuch as James T. Mitchell was the Republican nominee and sure of election, Judge Arnold declined the nomination and Judge J. Brewster McCollum was nominated. Shortly after the nomination, Justice John Trunkey died, creating another vacancy, which insured McCollum's election. Judge Arnold died shortly after his third election on April 24, 1903, from an illness from which he had been suffering for over two years.

Robert M. Willson was born at Hammondsport, New York, on February 7, 1839. He graduated from Yale University, and read law with his uncle, William Strong, afterwards a judge of the Supreme Court of Pennsylvania, and later a justice of the Supreme Court of the United States. He was admitted to the bar in 1864. He was appointed assistant city solicitor in 1873, and served some years in that capacity. He was elected a judge of Court of Common Pleas No. 4 in November, 1884, succeeding Judge Elcock, and reëlected in 1894 and again in 1904, becoming president judge in 1903. He resigned from the bench in 1915, his resignation to take effect on March 31st of that year.

Charles W. Audenreid was born at Philadelphia, on December 9,

1863. He was educated at the Rugby Academy and the University of Pennsylvania, from which latter institution he graduated in 1883. He studied law in the office of John G. Johnson, attending the Law School of the University of Pennsylvania at the same time, and was admitted to the bar in 1886. He was a member of common council from 1891 to 1894, and of select council from 1904 to 1906. He was associated in practice with Logan M. Bullitt, and afterwards with Edward Morrell. He was appointed an associate judge of Court of Common Pleas No. 4 on December 7, 1896, succeeding M. Russell Thayer, and was elected to succeed himself in November, 1897. He was reëlected in 1907, and became president judge of that court on the retirement of Judge Willson.

William Wilkins Carr was born at Washington, D. C., on May 9, 1853. He was educated in the public schools of Philadelphia and at the University of Pennsylvania, from which institution he graduated in 1876, and was admitted to the bar in 1878. He was appointed United States District Attorney in 1888, and served as postmaster of Philadelphia from 1893 to 1897. In 1901 he was the Democratic candidate for district attorney of Philadelphia. He was appointed an associate judge of Court of Common Pleas No. 4, in 1903, succeeding Judge Arnold, and was elected to succeed himself and reëlected in 1913. He is the author of a work on the "Trial of Lunatics," and of one on the "Judicial Interpretation of the Tariff Acts."

Thomas D. Finletter, the son of Judge Thomas D. Finletter, was born at Philadelphia, in 1862. He was educated at the Episcopal Academy and the University of Pennsylvania, from which latter institution he graduated in 1882. He attended the Law School of the University, and was admitted to practice in 1884. He served ten years as an assistant city solicitor, and also a number of years as assistant district attorney. On the resignation of Judge Willson on March 31, 1915, he was appointed his successor, and elected to succeed himself in November of that year.

Court of Common Pleas No. 5.—This court was organized in September, 1901, under the provisions of the Act of July 18, 1901, P. L. 669, with Willis Martin, president judge, and Robert Ralston and Maxwell Stephenson, associate judges.

J. Willis Martin was born at Philadelphia, and was admitted to the bar on June 14, 1879. He served as a member of the First City Troop in the Porto Rican campaign during the War with Spain. On the establishment of Court of Common Pleas No. 5, in 1901, he was appointed president judge thereof, and elected to succeed himself and reëlected in 1911.

Robert Ralston was born at Philadelphia, on March 11, 1863. He was educated at the Episcopal Academy, of Philadelphia. He was employed by the Pennsylvania Railroad Company from 1878 to 1879, and afterwards by the Reading Iron Works. He graduated from the Law School of the University of Pennsylvania in 1885, and was admitted to the bar in the same year. He served as assistant United States District Attorney from 1892 to 1898. In 1895, he became colonel of the Third Regiment,

Pennsylvania National Guard. On the establishment of Court of Common Pleas No. 5, in 1901, he was appointed and in the fall of that year was elected associate judge of that court, and was reëlected in 1911. He died in February, 1916. He was the author of various legal essays, and the editor of several text books. He was also the author of the Practice Act of 1915.

John Monaghan was born at Ashland, Pennsylvania, December 27, 1872. He graduated from the Central High School of Philadelphia in 1889, and from the Law School of the University of Pennsylvania in 1894. He served as assistant city solicitor under John L. Kinsley, and was reappointed by J. Howard Gendell. He continued in that office until his resignation in 1911. He was appointed attorney for the Republican City Committee in 1906, and served in that capacity until 1914, when he was appointed a special assistant district attorney, from which office he resigned on May 20, 1915, having been appointed a member of the Public Service Commission, on which he served until his appointment to the bench on June 16, 1916, to succeed Judge Robert Ralston, deceased, and was elected to succeed himself in November, 1917.

Judge Stephenson was not elected to succeed himself, but was succeeded in January, 1902, by G. Harry Divas, who had been elected in November of the previous year.

G. Harry Davis was born at Philadelphia, in 1838. He was educated in the public schools, and read law in the office of Charles Ingersoll and William Ernst. He served during the War of the Rebellion, and attained the rank of colonel. He was the Independent candidate for register of wills in 1900, but was defeated for election. He was elected to the bench of Common Pleas Court No. 5 in November, 1901, and served thereon until his death on April 18, 1906.

William Heaton Staake was born at Brooklyn, New York, on December 5, 1846. He graduated from the Central High School of Philadelphia, and later attended the Law School of the University of Pennsylvania, from which institution he graduated in 1868. He was admitted to the Philadelphia bar on March 14, 1868, and practiced from that time until his appointment as an associate judge of Court of Common Pleas No. 5, in 1907, to succeed G. Harry Davis, deceased, and was elected to succeed himself in 1907. Since 1901, he has been chairman of the executive committee of the National Conference of Commissioners on Uniform Laws. He has also been secretary of the State Bar Association for many years, and has been active in various charitable and other associations.

The Act of March 29, 1913, P. L. 20, provided for one additional law judge for each of the Courts of Common Pleas of Philadelphia, and under the provisions thereof Samuel M. Hyneman, Thomas D. Finletter, William M. Stewart, Jr., Joseph P. McCullen and D. Webster Dougherty were appointed such additional judges, but it was held in Commonwealth v. Hyneman, 242 Pa., (1913) that said act violated Article VII of Section 6 of the Constitution, which provides that when increases of judges shall amount to three, such judges shall constitute a distinct and separate court,

and the persons named were ousted from their offices after serving but a brief period.

Another Act of 1913, that of July 12th, P. L. 469, provided for the consolidation of the courts of Common Pleas of Philadelphia City and County similar to that effected in the case of the courts of common pleas of Allegheny county by the amendment to Section 6 of Article V of the Constitution of November, 1911, but it was held in Bachman v. McMichael, 242 Pa., 482, (1914) that the said act violated said Section 6 of Article V.

Orphans' Court.—Prior to 1875, the Orphans' Court business of the city and county of Philadelphia had been transacted by the judges of the Courts of Common Pleas, but Section 22 of Article V of the Constitution of 1874 provided for the establishment of separate Orphans' Courts in all counties having a population in excess of 150,000. This provision was carried out by the Act of May 19, 1874, P. L. 206, Section 3 of which provided that the Orphans' Court in the County of Philadelphia should be a separate court of record consisting of three judges learned in the law from and after the first Monday of January, 1875. The said court was therefore organized in January, 1875, with William B. Hanna, T. Bradford Dwight and Dennis W. O'Brien as associate judges. The Act of May 19, 1874, did not provide for a president judge, but such an officer was provided for by the Act of May 24, 1878, P. L. 131.

William B. Hanna was born at Philadelphia, on November 23, 1835. He was educated in the private and public schools of that city and graduated in July, 1853, from the Central High School, and in 1857 from the Law Department of the University of Pennsylvania. He was admitted to the bar on November 14, 1857. He served for a number of years as assistant district attorney and also as a member of the select and common councils of Philadelphia. He was a member of the Constitutional Convention of 1873. He was elected an associate judge of the Orphans' Court of Philadelphia County on November 2d, 1874, and on June 5, 1878, under the provisions of the Act of May 24, 1878, P. L. 131, which created the position of president judge of said court, he was appointed such president judge. He was reëlected in 1884 and again in 1894 and 1904, serving until his death on August 4, 1906, a period of thirty-one and a half years.

Thomas Bradford Dwight was born at Portland, Maine, on September 17, 1837. His father, Rev. William T. Dwight, was a son of Timothy Dwight, well known as a president of Yale College. The father was admitted to the Philadelphia bar on November 7, 1821, and practiced thereat for some time before he became a clergyman. The son studied law with George M. Wharton, and was admitted to the bar on December 10, 1861. He served for some time as an assistant district attorney. He was elected a judge of the Orphans' Court in November, 1874, and served until his death on August 31, 1878.

Dennis William O'Brien was born at Reading, in 1818. He graduated at Harvard University and studied law in the office of William

Strong, afterwards an associate justice of the Supreme Court of the United States. He was admitted to the Philadelphia bar on January 22, 1853. He was appointed assistant district attorney under Colonel William B. Mann, and in the absence of Colonel William B. Mann during the Rebellion acted as prosecutor for the city and county of Philadelphia. He was elected a judge of the Orphans' Court of Philadelphia on November 2, 1874, and served until his death on January 24, 1878, at the age of sixty years.

William N. Ashman was born on August 18, 1833. He studied law in the office of P. Pemberton Morris, and was admitted to the bar on May 16, 1857. During the War of the Rebellion he was solicitor for the United States Sanitary Commission. In January, 1871, he was appointed assistant solicitor of Philadelphia, and continued in that office until his accession to the bench of the Orphans' Court, to which he was appointed on January 11, 1878, elected in the fall of that year and reëlected in 1888, 1898 and 1908, becoming president judge on the death of Judge Hanna. He retired from the bench in the spring of 1910, owing to failing sight, and died on October 14, 1915.

The following account of the Orphans' Court of Philadelphia is taken from the obituary notice of Judge Ashman in Volume XXI of the State Bar Association Reports:

The lawyers of his day loved the Orphans' Court. They spoke of it, and still speak of it, as the model court of the State. Its work was well done and was promptly done. It gave to suitors, as few courts in large cities have done, their constitutional right to justice "without sale, denial or delay." It would not be possible to find four judges better fitted for their work, and who supplemented each other in a higher degree. Judge Hanna was exactly fitted for what he was, the executive head of the court; Judge Ashman, sweeping aside all technicalities, reached as by intuition the inherent justice of every case and held tenaciously to it; Judge Penrose was unexcelled in his knowledge of the law as a science; and Judge Ferguson surpassed them all in his knowledge of men. Against that that court enjoyed the distinction of being less often reversed than that combination it was next to impossible to make head, and so it was any other. It was not always that the judges thereof agreed. On the contrary, perhaps more often than in any other court, one disagreed either with the reasonings or conclusions of the others, and set forth in dissenting or concurring opinions the differences which existed between them. That course was a great training to them all, and it is no reflection on the other judges to say that it benefitted Judge Ashman most. Nor is it any reflection upon them to say that when they did thus differ, and the case reached the Supreme Court, Judge Ashman was more often sustained than any other.

He was the last surviving member of that great court. The first to go was Judge Ferguson, who died March 30, 1905, and Judge Ashman's beautiful remarks at his bar meeting, and those of his colleagues, Judges Hanna and Penrose, will be found in the "Legal Intelligencer" of that year, page 155. The next year President Judge Hanna was taken (August

4, 1906) and Judge Ashman's remarks when he took the chair at his bar meeting, and those of Judge Penrose, will be found in the "Legal Intelligencer" of 1906, page 444. Three years ago (September 4, 1911) the last of his great colleagues died. Judge Ashman's health would not permit him to be present at Judge Penrose's bar meeting, but his beautiful tribute will be found in the "Legal Intelligencer" of 1911, page 629. And now he, too, has gone, and the "old court," as the judges thereof and the bar often called it, has become a thing of the past, leaving behind it, however, a delightful memory to all who practiced before it.

Clement Biddle Penrose was born at Carlisle, on October 27, 1832, and graduated from the University of Pennsylvania in 1850. He studied law with his father, who was Solicitor of the Treasury Department under Presidents Harrison and Tyler, and with Henry M. Watts, and was admitted to the bar on November 19, 1853. After twenty-five years of practice at the bar he was appointed a judge of the Orphans' Court of Philadelphia in February, 1878, and elected in the fall of that year and reëlected in 1888, 1898 and 1908. He became president judge on the resignation of Judge Ashman. During his judicial career of nearly thirty-four years he was recognized as one of the ablest members of the judiciary. He died on September 4, 1911.

Joseph C. Ferguson was born of Scotch Irish ancestry, on September 22, 1840, in the old district of Kensington. He was educated in the public schools of Philadelphia and graduated from the Central High School. He studied law with Stephen Benton, and was admitted to practice on October 26, 1861, from which time he practiced until his appointment to the bench on May 6, 1887, under the provisions of the Act of April 28, 1887, P. L. 72. While a member of the bar he served as a member of the Board of Education for about fifteen years. He died in office on March 30, 1905.

Judge Ferguson was succeeded by Morris Dallett, who was born in New York, in 1864. He was educated at Henry Hobart Brown's School in Philadelphia, now known as the De Lancey Academy, and the University of Pennsylvania, from which latter institution he graduated in 1884. He then entered business in New York, but later studied law at the Law School of the University of Pennsylvania and graduated in 1887. He was associated in practice for a time with former Governor Pennypacker, and was appointed by him on the death of Judge Ferguson, as his successor. He was elected to succeed himself, becoming president judge on the resignation of Judge Penrose, and served until he died, August 23, 1917.

Joseph F. Lamorelle was born on June 30, 1859, at Philadelphia, and was admitted to the bar, after graduation from the Law School of the University of Pennsylvania, on October 16, 1880. On his admission he associated himself in practice with James Parsons, afterwards with Jones, Carson & Beeber, and still afterwards with John Kent Kane. He was appointed an associate judge of the Orphans' Court on August 30, 1906, succeeding Judge Hanna, and was elected to succeed himself in Novem-

ber of that year. He succeeded Judge Dallett as president judge on September 27, 1917.

Edward A. Anderson was born at Philadelphia, on December 7, 1857, and educated in the public schools of that city. He studied law with E. Coppee Mitchell, and graduated from the Law School of the University of Pennsylvania in 1878, taking the Sharswood prize for the best thesis submitted by any member of the graduating class. He was admitted to the bar on June 15, 1878, and was associated in practice with John H. Fow for many years. He served as a member of common council from the Twenty-sixth Ward from 1886 to 1902, and was elected a county commissioner in 1905. He was appointed an associate judge of the Orphans' Court on March 27, 1907, under the provisions of the Act of March 22, 1907, P. L. 27, providing for an additional associate judge of that court, and was elected to succeed himself in the fall of that year. He died while in office, January 11, 1920.

Charles Francis Gummey was born at Philadelphia, on December 22, 1862. He was educated at the Germantown Academy and the University of Pennsylvania, from which latter institution he graduated in 1884, later graduating from the Law School thereof in 1888. He was admitted to practice on June 16, 1888. He was appointed an associate judge of the Orphans' Court in 1911, succeeding Judge Ashman, and elected to succeed himself in the fall of that year.

John Marshall Gest was born at Philadelphia, on March 17, 1859. He was educated at Doctor Fairies' School on Dean street above Spruce, and at the University of Pennsylvania, from which latter institution he graduated in 1879, graduating later from the Law School of the University in 1882. He was appointed an associate judge of the Orphans' Court of Philadelphia on July 1, 1911, to succeed Judge Penrose, and elected in 1911 to succeed himself. Judge Gest is the author of a work on wills, and of "The Lawyer in Literature." He was a member of the commission to codify and revise the law of decedents' estates, which made such an excellent report in 1917, the recommendations of which were adopted by the General Assembly.

George Henderson was born at Philadelphia on June 20, 1868. He was graduated Bachelor of Philosophy from the Wharton School of the University of Pennsylvania in 1889, and Bachelor of Law, *cum laude*, from the Law School of the University in 1896. He was the first general secretary of the American Society for University Extension 1890-2; director of the University Extension Division of the University of Chicago 1892-4; member of the executive committee of the Public Education Association since 1901, and was president of that Association from 1908-11; he took a considerable part in the drafting of the school legislation for Philadelphia under the Act of 1905, and in the drafting of the School Code, 1911; he has been a director of the Mercantile Library Company since 1899; a governor of the Tredyffrin Country Club since 1917; and was appointed to the Orphans' Court bench on May 22, 1918,

to succeed the late Judge Dallett, and was elected for the full term in November, 1919. Throughout the War he served as a member of the Local Draft Board, for which services he refused to accept any compensation. He was married, October 14, 1891, to Mary Bertha Stuart, a daughter of the late Mrs. Mary Irwin Agnew. His children are Mrs. J. Jarden Guenther and Miss Mary Henderson.

Henry C. Thompson was born in Philadelphia on October 19, 1862. He attended the Episcopal Academy, and entered the University of Pennsylvania in the class of 1883, leaving, however, at the end of his junior year to enter the Law Department, from which he graduated in June, 1885. In July, 1898, he formed a law partnership with the late William F. Harrity, which continued until Mr. Harrity's death in April, 1912, after which time he was associated with Alfred R. Haig. He was appointed a judge of the Orphans' Court, succeeding Judge E. A. Anderson, on January 20, 1920. He is a member of the Union League, Law Association, Pennsylvania State Bar Association, and the Racquet Club, and has been secretary of the Lawyers' Club for the last ten years. He has been particularly active and interested in the affairs of the Phi Kappa Psi fraternity and in all University of Pennsylvania activities, having been chairman of the Alumni Day ceremonies for the last five years.

He was married in November, 1895, to Louise M. Castner, by whom he has one daughter, the widow of Lieutenant Newton Downs, Jr., who lost his life during the late war.